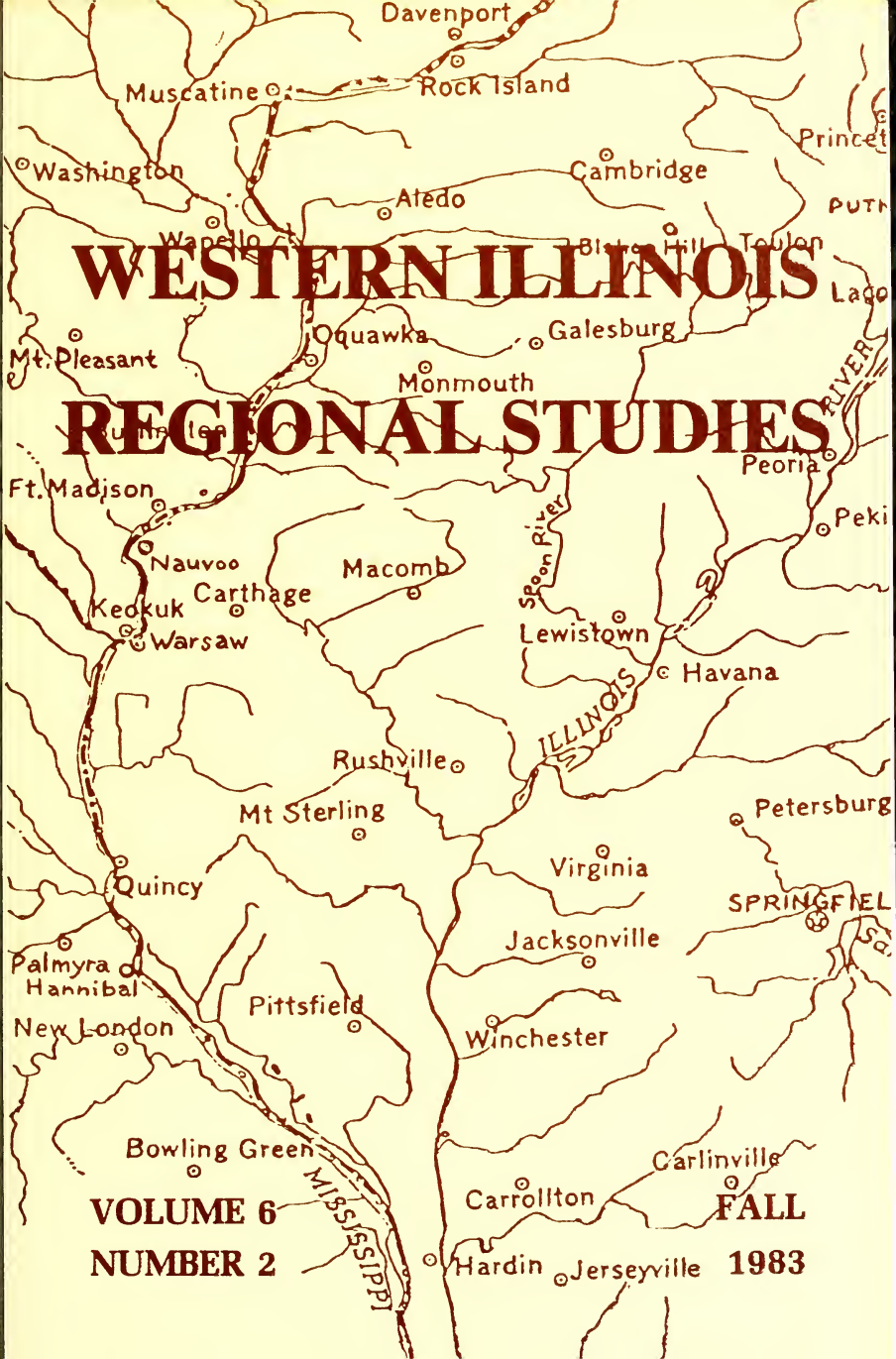
WESTERN ILLINOIS REGIONAL STUDIES



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MILITARY ARRESTS OF LAWYERS IN ILLINOIS DURING THE CIVIL WAR

Scott Owen Reed

In late 1862 and early 1863, several prominent lawyers were arrested in Illinois, causing a public outcry which seriously undermined popular support for the Lincoln administration and its war policies. While the arrest of someone who happens to be a lawyer, if hopefully less than commonplace, is not normally cause for widespread protest, the circumstances under which these arrests were made can be described as nothing less than extraordinary.

Contrary to the reader's most likely first impressions, these incidents did not take place exclusively in the region south of Vandalia; they occurred from southernmost Egypt to Galena, far from the Confederacy. The arrests were made without specific criminal charges, and the victims were frequently lawyers who were members of the judiciary, or who were active in politics, especially Democratic politics. Made by military officials or U.S. marshals, the arrests did not result in a trial, either civilian or military, for these men. Unable to secure their freedom through a writ of habeas corpus, which had been suspended for those accused of disloyal practices, they were released as abruptly as they had been seized, often through executive order.

In this article, I propose to discuss three of these occurrences—the arrests of Andrew Duff, William Allen and others in Williamson County, the arrests of David Sheean and Madison Johnson in Jo Daviess County and the arrest of Charles Constable in Clark County. I will first narrate the circumstances surrounding these events and discuss the apparent causes. Then, I will examine the responses of the legal system to these arrests, and finally, I will draw conclusions about the effectiveness of the American legal system in protecting the most fundamental of civil liberties in times of national emergency.

TO APPEAR DISLOYAL IN DANGEROUS TIMES

While he was holding court at Marion, on August 14, 1862, Judge Andrew D. Duff was arrested by the order of U.S. Marshal David L. Phillips of the Southern District of Illinois. Earlier that year, Phillips had undertaken an investigation into Confederate-sympathizing secret societies in southern

Illinois, and had informed Illinois Governor Richard Yates that those posed a menace to the Union's war efforts. Yates wrote directly to Lincoln, requesting him to declare Phillips' district "to a certain extent" under martial law, to allow Phillips to arrest all persons adjudged by Phillips and Yates "to be dangerous to the government of the United States," and to enable Phillips to have these individuals detained at military prisons throughout the country, or to parole them under terms set by Phillips.[1] Perhaps partially in response to this plea, Secretary of War Edwin Stanton issued an order, dated August 8, 1862, which directed and authorized U.S. marshals and others to arrest all those persons, who, by act, speech or writing, discouraged volunteer enlistments, gave aid or comfort to the enemy or engaged in any other disloyal practice against the federal government.[2] Another War Department communication, also dated August 8, suspended the writ of habeas corpus for those so arrested.[3] It was those documents which cloaked Phillips with authority when he ordered the arrest of Duff, and numerous others, in August of 1862.

With Duff at the courthouse on that day were William J. "Josh" Allen, recently appointed Democratic member of Congress, John M. Clementson, State's Attorney for the 26th Judicial Circuit, John H. Mulkey, judge of the Court of Common Pleas for the City of Cairo, and Alexander C. Nelson of Williamson County. All of these men were arrested on the spot and transported to Cairo the following day. On August 18, Dr. Samuel H. Bundy, who was serving as the foreman of the jury then under Judge Duff, was taken to Cairo by Federal marshals. Bundy later reported that although the authorities made great haste to remove him from his home on the day of the funeral of one of his children, their hurry had vanished by the time they arrived in Carbondale. At that city, they left him in a hotel for some time, where he was able to observe the following events:

> I soon perceived that they were taking down evidence in an adjoining room, and as the windows were open I walked out and stood by one and saw and heard all that occurred within. Two notorious abolitionists, Dick Dudding, of Jackson County, and Dr. Owen, of Williamson, were the managers: the first writing down the answers drawn out of the witnesses by the other. All the witnesses were in the room together. They were Owen's political allies and special friends and dependents; and he prompted and led them to make just such statements as suited him; and when anything was said favorable to the parties accused, it was rejected and not written down. The evidence of some witnesses was refused entirely, because favorable to us. Judge Allen's brother was at the hotel to cross-examine the witnesses, but was refused the privilege. I asked permission to go in, but was refused; nor were any of our friends allowed to be present, though all the abolitionists about town seemed to pass in and out at pleasure.[4]

Whether or not Bundy accurately portrayed the treatment of the evidence against the prisoners, the public outrage following the arrests was hardly less than his own. The Democratic *Illinois State Register*, of Springfield, for August 29, 1862, quoted the Jonesboro *Gazette* of the previous day, and defended the honesty, fidelty to principle, ability as a statesman, and loyalty

to the government, of Congressman Allen. The paper also maintained that "we would be far from offering one word in apology for the man who would countenance any effort to cripple the nation in its great effort to assert its supremacy; but we would have no respect for the dirty sneak who would misrepresent to bring trouble and disgrace upon a loyal man to vent a contemptible personal malice."[5]

In Cairo, the men were paroled on their honor, in which situation they were allowed to remain until they left that city. On August 20, they were presented with the affidavits of those who had accused them of disloyal practices. These four affidavits, all signed with an "X", alleged that the prisoners were deeply involved in that notorious Copperhead secret society, the Knights of the Golden Circle.[6] Three of the affiants attested to having attended meetings of this dreaded organization, which were actually only Democratic rallies, and the fourth affiant "added a hatful of contradictory statements" to his claim that he had personally joined the Knights.[7]

The Republican Chicago *Tribune* made much of these allegations. On August 26, 1862, an article entitled "TREASON IN ILLINOIS - The Knights of the Golden Circle - Full and Authentic Expose." It told of the objectives, secret handshakes, passwords and other indicia of membership in the K.G.C., and it included two of the affidavits presented to the Cairo captives, as well as five others not shown to that group. All of these five new affiants were able to sign their names.[8] When faced with the entire set of affidavits, Judge Duff offered to pay for the transportation of the affiants to Cairo so that he could confront them, but this was denied. In proceedings at Cairo, Duff was not even permitted to contradict the evidence published in the *Tribune*, although he did deny membership in the K.G.C., "under that or any name whatever."[9]

On September 2, the prisoners departed for Washington under guard, with the exception of the ailing Congressman Allen, who remained in Cairo. They arrived three days later, and were committed to the Old Capitol Prison. That institution was, it seems, as unpleasant, cramped and dirty as one might expect a Civil War prison to have been. Its only unusual characteristic was that its inmates were mostly Northern political prisoners.[10] In fact, one prisoner estimated that, within a period of a few weeks, some twenty-five Illinoisans were housed within those walls.[11] During that August in 1862, a number of southern Illinoisans of various occupations ended up in the Old Capitol. Their tales, though often fascinating,[12] cannot be told here.

Judge Duff was finally released from captivity on November 11, 1862, just after election day. He was not brought to trail before either a civilian or a military tribunal, and the only concession required of him was that he agree not to prosecute the Secretary of War or Judge Advocate L.C. Turner for his imprisonment. He had been at the Old Capitol for slightly more than two months; most of his fellow Illinoisans arrested that August were also imprisoned approximately that long. All were released, as was Judge Duff, without further proceedings or investigation.

Perhaps the most celebrated case in the annals of arbitrary arrests in Illinois during the Civil War is that of lawyers Madison Johnson and David Sheean in Galena.[13] On August 28, 1862, these men were arrested by U.S. Marshal J. Russell Jones of the Northern District of Illinois, Acting under the authority of the same War Department communications which supported the actions taken by his counterpart in the Southern District. Sheean was brought to Chicago from Galena that day, while Johnson was permitted to remain behind for a day in order to finish his presentation in a murder trial. A Federal judge in Chicago, believing that Stanton's call for their arrest was illegal, offered to free the men on a writ of habeas corpus, the directives of August 8 notwithstanding. However, they preferred, according to an entry in Johnson's diary, to meet the substance of the charges head on, rather than to claim that the procedure under which they were arrested was irregular. Two days after their arrival in Chicago, both prisoners were sent to the military prison known as Fort Lafayette, in New York.

While there, Sheean and Johnson were presented with the affidavit of a fellow prisoner, a felon, who alleged that they had made no attempt to hide their Southern sympathies and that Johnson had admitted that he was a member of the Knights of the Golden Circle. The affiant also claimed that "Johnson had hinted at plans for a general conspiracy, an uprising of pro-slavery men who would make Northern streets run with blood."[14] To make matters worse, the marshals who had accompanied the men to New York stated that Johnson had told them that the Irish of Galena were ready to rise at his signal. No official action appears to have been taken on the basis of this evidence, but it could scarcely have done otherwise than prolonged their stay with the Union Army.

On September 9,[15] Madison Johnson was faced with his accuser, in the form of Judge Advocate Turner.[16] As Johnson later related the exchange, the Judge Advocate "asked me 'if I was not Yankee enough to guess what I was arrested for?' I replied, 'I had not a drop of Yankee blood in me, and did not desire to guess, but did desire to know what I was charged with, and who was my accuser.' Without answering he asked 'if I had brought a suit against Smith in favor of Roth, for damages?' "[17] And indeed he had, though it had likely not occurred to him that this would be a cause for his arrest.

In *Roth v. Smith*,[18] the plaintiff, a lieutenant in the 12th Regiment of Illinois volunteers, allegedly exhorted his friends, in the presence of the defendant, not to enlist in the military. Acting upon the affidavit of the defendant, the Sheriff of Jo Daviess County arrested the plaintiff who was confined in the county jail for three weeks, followed by four months of imprisonment at Camp Douglas in Chicago. Madison Johnson acting as his attorney, the plaintiff brought suit in the Circuit Court of Jo Daviess county to recover damages for his assault and false imprisonment. Following a jury trial in 1863, the plaintiff was awarded $300 damages, but a new trial was granted, in which the jury returned a verdict for the defendant. On appeal, the Illinois Supreme Court found certain evidentiary and instructional assignments of

MADISON Y. JOHNSON

DAVID SHEEAN

error brought by the plaintiff to be without merit, but remanded the case for a new trial, holding that the jury must have failed to give proper weight to the unimpeached testimony of several witnesses who heard the defendant take responsibility for the plaintiff's arrest.[19]

To return to the interview at Fort Lafayette, Johnson was asked whether he belonged to the Knights of the Golden Circle, to which he replied in the negative. The Judge Advocate then tendered an oath, which Johnson refused to take. It was his position that he would take an oath in support of the Constitution and laws of the United States, but he would not swear to anything which implied that the charges against him had any basis in fact, nor would he swear allegiance to the Lincoln administration. Sheean agreed with him, and both lawyers held fast throughout their imprisonment.

After this unsatisfying confrontation, Johnson was taken on September 17 to a "House of Dentention" in New York City,[20] and on the following day he was removed to Fort Delaware, Delaware, where he remained for the rest of his confinement. Sheean stayed at Fort Lafayette. Both men petitioned the commandants of their respective prisons, Secretary of War Stanton and President Lincoln, among others, to receive a full hearing, but to no avail. On November 22, Stanton issued an order which freed many of the political prisoners, but its benefits did not extend to Sheean and Johnson. Darius Hunkins, a friend to Johnson, undertook negotiations with Stanton, Congressman Elihu B. Washburne and Lincoln.[21] His activities have been credited with obtaining the release of the lawyers in return for their giving oaths to uphold the Constitution and be loyal, peaceful citizens, as they had offered to swear earlier. Sheean's parole papers were signed by Stanton on December 14, 1862, and Johnson left Fort Delaware the next day.

The final chapter of this survey of arbitrary arrests of lawyers in Civil War Illinois comes in the form of the less publicized but certainly quite dramatic arrest of Judge Charles H. Constable in Marshall, Illinois.[22] Constable, who had ridden the circuit with Lincoln and shared his Whig affiliations, later became a Democrat known for his outspoken anti-war sentiments.[23] Two nineteenth-century historians called Constable's arrest "the most justifiable" of all military arrests made in Illinois.[24]

In March of 1863, two sergeants from Indiana were sent into Clark County, Illinois, where they arrested four men claimed to be deserters, one from an Indiana regiment and three from an Illinois unit. The mother of one of the deserters urged the Sheriff of Clark County to arrest the sergeants and have them charged with kidnapping, which he did. The two were brought before Judge Constable, who determined that their papers were insufficient to confer upon them the authority to make arrests in Illinois; he did not allow them to show that the prisoners were in fact deserters. Constable set bail for the sergeants at $500, which they were able to meet.

The ultimate superior of the sergeants was the widely known anti-Copperhead warrior Colonel Henry B. Carrington, who served as the military aid to Indiana Governor Oliver P. Morton.[25] The night before the scheduled

trial of the sergeants, Carrington "invaded" Illinois under cover of darkness, half of his force dressed in "butternut jeans" and the other half in regular military uniforms. At the trial, Carrington and his "butternut" forces took seats in the Clark County courthouse while the remainder of his unit waited outside. Carrington sat through the presentation of evidence, and through closing arguments as well. But, when Constable began to instruct the jury, Carrington rose from the audience and ordered the sergeants released and Constable placed under arrest. Constable was taken to Indianapolis, where he remained for the rest of March, 1863. On April 1, he was brought to Springfield, Illinois, where Federal Judge Samuel H. Treat ordered his release following a hearing.

A question which must remain in the reader's mind, and one which is somewhat difficult to answer, given that the arrests did not result in trial, is whether the prisoners had committed any offenses for which they could have been indicted and tried. One historical school holds that most of the political prisoners during the Lincoln administration were those who had engaged in overt acts of assistance to the Confederacy, who were actual spies or saboteurs, or who could be termed "active and dangerous obstructionists."[26] As an example of such an "obstructionist," one might point to Congressman Allen, who was referred to by a contemporary as "almost an armed secessionist" for openly proposing that the State of Illinois be divided so that Egypt would be able to choose for itself whether it would join the Confederacy.[27]

The opposing view maintains that these prisoners could not have been arrested, had it not been for the extraordinary powers conferred upon Federal and military authorities. Gustave Koerner, a German aide-de-camp to General Fremont in St. Louis, commented after he had reviewed many similar cases that the allegedly disloyal acts "amounted in most of the records merely to loud and disrespectful talk about Lincoln, to idle boastings in the streets and saloons, and to hurrahing for Jeff Davis."[28] Koerner was of the opinion that in no case that he reviewed was any overt act of assistance to the rebels proven beyond a reasonable doubt, and more recent research has shown the general applicability of Koerner's conclusions.[29]

Yet, the "war critic" theory is not completely satisfying. There were, undoubtedly, many individuals who had been vocal in opposing Lincoln's war aims and practices, but not all of these critics were arrested. The victims of the arrests discussed above shared the common trait that they were in a position to use the legal system to accomplish perceived anti-Union ends. Most importantly, however, they had engaged in some activity in the past which indicated that they might attempt to further those ends at some time in the future. The "ends" which the administration feared, in the cases of these individuals, consisted of the discouragement or obstruction of enlistments.

With the help of Stephen A. Douglas, who made an extensive tour of the state in support of the Union's war effort shortly before his death, every

portion of Illinois was able to meet its recruitment quota in the spring and fall of 1861, after which recruiting was temporarily closed. In July of 1862, Lincoln requested 300,000 more volunteers, but in Illinois, the enthusiasm shown in the previous recruiting effort had all but vanished. The shortage of enlistments was alleviated only by threats of state and national authorities, in August, 1862, to employ conscription.[30] It was this atmosphere in which the War Department felt the need to arrest, and to suspend the writ of habeas corpus for, those persons suspected of discouraging volunteers. That group included the prominent laywers who are the subject of this article.

For instance, before he became a member of Congress, William Allen was said to have hampered the Union recruiting efforts, not just be discouraging men not to enlist, but by activity encouraging them to travel south to join the Confederate army.[31] Judge Constable's conduct in failing to release the Indiana sergeants in search of deserters may have been thought of as tantamount to discouraging enlistments, and Madison Johnson was tainted by having been the lawyer for a soldier accused of warning his friends not to join up.

David Sheean's arrest may have been prompted by his part in a suit similar to *Roth v. Smith.* [32] Two residents of Galena, the Harris brothers, secured the arrest of a certain Irishman who had stated that he would not enlist unless he was paid his bounty in advance. That Irishman, with the assistance of Sheean, sued the Harris brothers and the Sherrif of Jo Daviess County for damages resulting from his false imprisonment. Although the suit was dismissed while the plaintiff was in jail and Sheean was in Ft. Lafayette, it was reinstated[33] and damages were ultimately awarded to the Irishman.[34]

It was these activities, combined with their status within the legal system, that elevated these men to a dangerous position in the eyes of Union authorities. Merely to appear disloyal posed no dangers in Civil War Illinois, but to take any action which manifested disloyal intent was, in effect, to commit a crime which was unknown in this state before or since that time.

OF COURTS AND LEGISLATURES

The activity at the Illinois statehouse on the sensitive issue of arbitrary arrests centered around the legislative session which began in January, 1863. This session has often been called the "Copperhead Legislature," because it was heavily Democratic due to adverse voter reaction to the Confederate successes on the battlefield and to the announcement of the Emancipation Proclamation, as well as to the Republican-motivated arrests. The newly-elected legislators converged upon Springfield, buzzing about the imprisonment of friends, neighbors, constituents and fellow politicians. Naturally enough, one of the first items on their agenda was to find out more about the incidents.

A resolution was introduced in the Illinois House of Representatives on January 8, 1863, alleging that "many of the citizens of the State of Illinois have been deprived of their liberty. . . and have been forcibly carried beyond the limits of the state, and imprisoned in the military prisons of the United States, when no public charge had been preferred against them." It was agreed that a committee of five be appointed to investigate the causes of the arrests, the charges made, the political affiliations of the victims and whether all of them had been released.[35] Several other resolutions sought further information on the incidents from Governor Yates.[36]

Among the more publicized, and perhaps more practical, measures of this session of the General Assembly was an attempt to focus the inquiries of the judiciary, in the form of "an act to require circuit judges to charge the grand jury at each term to diligently inquire into the arbitrary arrests of citizens."[37] When the bill received a third reading in the House, the *Illinois State Register* reported that fact and commented that "we trust that it will become a law, that persons engaged in the infamous work of arresting citizens without due legal process, may be punished as they deserve."[38] Although the measure passed the House and was introduced in the Senate, it proceeded no further than a second reading in that body.[39]

In addition to considering resolutions of general import, such as those discussed above, the General Assembly also reacted to the arrests of particularly prominent individuals. Of course, the Johnson-Sheean affair generated a small flurry of resolutions. On January 27, 1863, State Senator William H. Green of Massac County (who had been the victim of a similar arrest himself) presented the petition of Madison Y. Johnson to the Senate. By then, Johnson had been free for just more than a month. It was agreed by both chambers that three men from the Senate and five from the House investigate the circumstances of his imprisonment and report back to the General Assembly.[40] When Johnson's memorial was presented to the House, its reader prayed the "Legislature to *demand* of the President of the United States, by what right and authority the Secretary of War ordered (his) said arrest and transportation beyond the State, and on whose application the same was made,' etc.; and that the Legislature take action in the premises, etc."[41] In fact, the General Assembly was so sympathetic to the plight of Sheean and Johnson that it granted them the use of its chambers to deliver a public lecture one evening.[42]

The arrest of Judge Constable, which was roughly contemporaneous with the widely followed military trial of Ohio Congressman Clement L. Vallandigham, also stirred the legislators to action. The House passed a resolution by the vote of 38 to 21, stating that actions such as the arrest of Constable and the trial of Vallandigham "are just alarming to all lovers of constitutional liberty, and threaten, if persisted in, to deprive the people of the last vestige of civil liberty; that such acts are, in the judgement of this General Assembly, unconstitutional and without any justification in fact; that the attempts to palliate or excuse them by the plea of 'military neces-

sity,' in loyal states, is an insult to an intelligent and free people."[43] The tenor of the House is indicated by the fact that a more moderate resolution, which encouraged judicial resolution to these questions and discouraged forcible resistance to the laws and "abuses" of the freedom of speech by insulting the government, was approved by the narrower margin of 35 to 23.[44]

None of the bills or resolutions discussed above appear to have produced any significant results, either by disciplining the officials responsible for the arrests or by compensating the victims. But, the level of debate in the General Assembly shows that the legislators were not unconcerned about furthering these goals. That body was hindered by two major factors in dealing with the problem of arbitrary arrests. First, most of the prisoners had been released by the time this session had convened. The voters of Illinois had vented their anger by tossing many Republicans out of office the previous November, and the lame ducks, seeing little to gain by continuing to keep these men in prison, released them. Second, this session of the General Assembly, which was scheduled to last through 1864, was terminated prematurely by the prorogation order of Governor Yates in June, 1863. This made the normal shortcomings of legislative slowness all the more acute.

The consideration of arbitrary arrests in the Illinois General Assembly provides a useful comparison with deliberations on that issue in Congress. Word of the arrests in Illinois reached that body by way of the state's delegates. In late 1862, when some of the prisoners were yet confined, Congressman William R. Richardson introduced a resolution which urged that the President be "requested to inform this House of the names of the persons that have been arrested in Illinois and taken to and confined in prisons outside the limits of said State," whether released or still held, "what were the charges against each of them, by whom the charges were made, also by whose order said arrests were made, and the authority of the law for such arrests."[45] The strongly Republican Congress was not as receptive to this appeal as was the "Copperhead Legislature" of Illinois, and the resolution was voted down 74 to 40.[46] Richardson also visited the Senate to lay before it the memorial of Madison Johnson. However, this was not done until February, 1863, nearly two months after Johnson had been released. As a result, the Senators voted 22 to 16 to table the petition, on the theory that there was no relief which they could grant him.[47] Nonetheless, the prevailing sentiments in that chamber suggest that even if Johnson had been in prison, the Senate would have been loath to come to the aid of one who refused to take an oath of allegiance to the government.[48]

Several members of Congress introduced resolutions denouncing the nationwide military arrests of civilians.[49] Other proposals went beyond the mere expression of opinion, by suggesting that the arrested individuals be notified of the charges against them,[50] and that the President[51] and the House Committee on Military Affairs report to Congress on the status of these

individuals.[52] Yet, these proposals, even if enacted, would have done the vast majority of political prisoners little good, because they were not introduced in Congress until 1865.

One of the more ambitious measures considered by Congress in aid of the victims of arbitrary arrests was an amendment proposed by Senator Lazarus W. Powell of Kentucky to a bill to provide for bail in the arrests of certain individuals who had contracted with military authorities.[53] This amendment would have imposed a fine of up to $10,000 or a prison term of up to five years upon any military officer who arrested or caused a civilian to be arrested without immediately turning him over to civilian authorities. The criminal penalties would not have immunized military officials from damages resulting from an unlawful arrest. Although Powell's amendment reached the floor of the Senate on two occasions, where it was accompanied by heated debate, it was twice postponed and never voted on by that body.[54]

In the course of the debate on Johnson's petition to Congress, Senator Timothy O. Howe of Wisconsin suggested that the petitioner ascertain from the judiciary whether he had a personal remedy against the person who illegally arrested him or the person who illegally confined him.[55] Johnson took Senator Howe at his word, for he brought suit in the Circuit Court of Jo Daviess County, against U.S. Marshal J. Russell Jones, Congressman Elihu B. Washburne, the two deputies who participated in his arrest and Bradner Smith, the defendant in *Roth v. Smith*. He sought to recover damages resulting from his imprisonment. The defendants, Jones, and the deputies alleged that they had arrested Johnson pursuant to Presidential orders, and the court directed a verdict in their favor. A jury trial was held on the claims against the remaining defendants, but as Johnson presented no evidence, a verdict was rendered for these defendants as well.

On appeal, the Illinois Supreme Court stated that the defense pleaded by Jones and the deputies was without merit, and thus it reversed the judgment directed in their favor, although the jury's verdict in favor of the other defendants was upheld.[56] The court's opinion considered the scope of the President's authority to arrest citizens of loyal states without specific charges during wartime but in the absence of any suspension of writ of habeas corpus.[57]

The defendants first contended that Johnson's arrest and detention were justified by his status as a belligerent. But, the court noted, the pleadings showed, at most, that Johnson was a citizen of a Northern state who may have sympathized with the Confederacy, yet he did not act to aid that cause. Since his citizenship bestowed upon him loyal status, and since he had not engaged in any acts of warfare against the United States, Johnson's arrest could not be supported by considering him to have been belligerent.

The court then discussed whether the defendants' actons could be upheld under the principles of martial law, which, the court explained, was actually no law at all, but the subjection of a district to the will of a military commander. This power of the government to impose martial law within the

theatre of military operations flowed, it was said, as an absolute necessity from the constitutional power to wage war. However, this authority did not of itself place Madison Johnson's arrest within the boundaries of the Constitution. The court reasoned that if such were the case, then it would follow that the military authorities, having arrested him, would be justified in submitting him to a military tribunal. But this conclusion was directly contrary to holding in *Ex parte Milligan*[58] that, where the jurisdiction of the civil courts was undisturbed, neither Congress nor the President could enforce martial law. Consequently, the court decided that since the conclusion was in error, the premise that Johnson's arrest was a permissable exercise of martial law must also be rejected.

Finally, Jones and the deputies argued, two Congressional acts, of March 3, 1863 and May 11, 1866, respectively, provided a full defense to their actions, which had been taken in pursuance of executive orders.[59] The court deemed these acts, which indemnified those persons who were compelled to pay damages resulting from actions taken in compliance with such orders, were a proper exercise of Congressional power. Nonetheless, these laws could not have constitutionally nullified the rights of those individuals arrested or otherwise injured before the passage of the acts, as was Johnson.

When the court's opinion was filed, in the summer of 1867, the *Illinois State Register* had no end of praise for it. It was proclaimed that the "people of this blessed state have great cause to thank Heaven in the possession of an able, impartial and independent judiciary. May such a blessing be never withheld from us!"[60] Other contemporaries felt that the opinion was nearly a foregone conclusion, as one of the three judges on the court was Sidney Breese, one of the state's most notorious Copperheads.[61] Some subsequent critics have found the decision faulty on several grounds.[62] It must be conceded that *Ex parte Milligan*, the primary authority upon which the Illinois Supreme Court relied, provided little support for its results. In Justice Davis' majority opinion, it was stated specifically that in a conflict like the Civil War, "there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the person arrested in answer to a write of habeas corpus."[63]

Despite these doctrinal difficulties, the opinion of *Johnson v. Jones*, in addition to being deemed controlling in two similar cases before the same court,[64] also resulted in a practical victory for Madison Johnson. On remand, the remaining defendants admitted that Johnson was not guilty of violating any law and that they had wrongfully arrested him, in return for his agreement to release them from liability for all damages except the costs and expenses resulting from his imprisonment. As Johnson estimated these damages at $1,000, judgment in his favor in that amount was entered by the Circuit Court of Jo Daviess County, sitting at its May Term in 1869.[65]

CONCLUSIONS

It is part of the common law tradition that the "very essence" of civil liberty lies in the right of the individual to seek protection from the government when he is injured.[66] In this country, as in England, the courts have normally been the agency which has been entrusted with that function.[67] But in few instances are the reasons for this rule as evident as in the case of military arrests discussed in this article.

Federal authorities, both executive and legislative, were almost of a single mind in supporting the arrests and denouncing those arrested. The majority in Congress was caught up in a wartime fervor and would likely not have found a remedy for petitioners like Madison Johnson, even if they had presented their grievances while they were imprisoned. President Lincoln, as head of the branch of government which carried out the arrests, could scarcely have been expected to hold a different opinion. He wrote that arrests in cases of rebellion were to be judged by different standards than arrests by process of courts, for in the former case, the arrests should be made to prevent an individual from acting in the future, while the latter type of arrest is made to punish an individual for what he has done. According to Lincoln, "the man who stands by and says nothing, when the peril of his government is discussed, cannot be misunderstood. If not hindered, he is sure to aid the enemy. Much more, if he talks ambiguously — talks for his country with 'buts' and 'ifs' and 'ands.' "[68]

Yet, even in the Illinois General Assembly, which was undoubtedly sympathetic to the cause of the victims of the arrests, no relief was granted. This was certainly due in part to the fact that the timing of the relevant session of that legislature did not often coincide with the arrests. Nonetheless, the ineffectiveness of the General Assembly is also traceable to a characteristic common to all legislative action. Those who were arrested fell outside the normal processes of law, but they were not governed by the discretionary rule known as martial law. As such, they constituted a small group of individuals in highly exceptional circumstances, and therefore their problems did not readily admit of a broad legislative solution. The courts, with an ability to fashion a remedy for each of these cases, naturally become the only branch of government to which the arrested men could turn for vindication. Although these individuals were awarded money damages years after their arrest, and were never released from imprisonment by court order, the fact remains that when they were exonerated, it occurred through the courts. The conclusion to the story of military arrests in Civil War Illinois is thus an additional example for those who argue that the judiciary is the most appropriate guardian of civil liberty.

NOTES

[1]Letter from Richard Yates to Abraham Lincoln (undated), reprinted in John H. Krenkel, ed., *Richard Yates, Civil War Governor* (Danville, Ill.: Interstate Publishers and Printers, 1966), pp. 181-182.

[2]Quoted in *Carver v. Jones*, 45 Ill. 334, 336 (1867).

[3]Quoted in Dennis A. Mahony, *The Prisoner of State* (New York: Carleton, Publisher, 1863), pp. 111-12. Both War Department orders of August 8, which were rescinded on September 6, 1862, were held to have violated Article I, Section 9 and the Fourth and Fifth Amendments to the U.S. Constitution in *Ex parte Field*, 9 F. Cas. 1 (C.C.D. Vt. 1862) (No. 4761).

[4]Mahony, p. 350.

[5]*Illinois State Register*, 29 Aug. 1862, p. 2, col. 3. See also *Illinois State Register*, 5 Sept. 1862, p. 2, col. 3, for an editorial calling for the intervention of Governor Yates to prevent the transportation of Illinoisans out of the state.

[6]Frank L. Klement, *The Copperheads in the Middle West* (Chicago: Univ. of Chicago Press, 1960) presents a persuasive argument that the strength and influence of the K.G.C. were greatly exaggerated by the Republicans for political purposes.

[7]Frank L. Klement, "Copperhead Secret Societies in Illinois During the Civil War," *Ill. State Hist. Soc. Jour.*, 48 (1955), 158-9.

[8]*Chicago Tribune*, 26 Aug. 1862, p. 2, cols. 3-6.

[9]Klement, *Middle West*, p. 161; Mahony, p. 361.

[10]For conditions of incarceration in the Old Capitol, see James J. Williamson, *Prison Life in the Old Capitol and Reminiscences of the Civil War* (West Orange, N.J.: n.p., 1911), pp. 18-88.

[11]Wood Gray, *The Hidden Civil War - The Story of the Copperheads* (New York: Viking Press, 1942), p. 88.

[12]For example, John W. Smith of Jacksonville was allegedly developing a bomb to disable locomotives without injuring the tracks. He wrote to a friend in St. Louis to enlist his assistance in making a working model of the bomb so that it could be presented to the Ordinance Department. This correspondence was seized and Smith was arrested because the authorities believed that he was plotting against the Federal government. Mahony, pp. 355-58. Similarly, farmer P.S. Reader of Macoupin County was arrested when the rumor spread that the "home guard" he was training were actually prospective Confederate soldiers. John A. Marshall, *American Bastile* (Philadelphia: Thomas W. Hartley & Co., 1869), pp. 317-18.

[13]The most complete and most recent account of this affair appears to be Kenneth N. Owens, *Galena, Grant and the Fortunes of War* (DeKalb, Ill.: Northern Illinois Univ. and Galena Hist. Soc., 1963), pp. 42-47. The author, who examined many original sources, including the Madison Y. Johnson manuscripts in Chicago, claimed that some interpretations of these documents in Klement, *Middle West*, were not completely accurate.

[14]Owens, p. 44.

[15]This date is from Johnson's petition to Congress, quoted at *Congressional Globe*, 37th Cong., 3rd Sess. (1863), pp. 664-65.

[16]It was Turner who had sent a telegraphic message to U.S. Marshal Jones, specifically calling for the arrest of Sheean. Marshall, pp. 451-452.

[17]*Congressional Globe*, 37th Cong., 3rd Sess. (1863), p. 664.

[18]41 Ill. 314 (1866).

[19]Justice Charles B. Lawrence, author of the court's opinion in *Johnson v. Jones*, 44 Ill. 142, 92 Am. Dec. 159 (1867), dissented from this conclusion. 41 Ill. 314, 319 (1866) (Lawrence, J., dissenting).

[20]This date is also from Johnson's petition to Congress.

[21]The President was said to have referred to Johnson as the most troublesome of the political prisoners. Marshall, p. 526.

[22]See Klement, *Middle West*, pp. 68-70; Alexander Davidson and Bernard Stuve, *A Complete History of Illinois from 1673 to 1873* (Springfield, Ill.: Illinois Jour. Co., 1874), pp. 890-91; L. White Busby, "Reminiscences of Uncle Joe Cannon - An Interview with the Former Speaker," *Saturday Evening Post*, 13 July 1981, p. 13.

[23]Willard L. King, "Lincoln and the Illinois Copperheads," *Lincoln Herald*, 80 (1978), 135.

[24]Davidson and Stuve, p. 891.

[25]For an account of Carrington's anti-Copperhead career, see George Fort Milton, *Abraham Lincoln and the Fifth Column* (New York: Vanguard Press, 1942), pp. 73-81.

[26]Arthur E. Cole, "Lincoln and the American Tradition of Civil Liberty," *Trans. of the Ill. State Hist. Soc.*, 33 (1926), 106; James G. Randall, *Constitutional Problems Under Lincoln* (Gloucester, Mass.: Peter Smith, 1963), p. 155.

[27]Harry E. Pratt, "Civil War Letters of Brigadier General William Ward Orme 1862-1866," *Ill. State Hist. Soc. Jour.*, 23 (1930), 249. Orme was a laywer in civilian life.

[28]*Memoirs of Gustave Koerner* (Cedar Rapids, Ia.: Torch Press, 1909), II, 173.

[29]See Klement, *Middle West*; Jasper W. Cross, "Divided Loyalties in Southern Illinois During the Civil War," Diss. Univ. of Illinois, 1942.

[30]Victor Hicken, *Illinois in the Civil War* (Urbana, Ill.: Univ. of Illinois Press, 1966), pp. 2-3.

[31]Gray, p. 58.

[32]Of Sheean and Johnson, Owens asserts that "their positions as spokesmen for the Galena Democracy appears a more fundamental cause for the arrests." Owens, p. 43.

[33]The same procedure may have been followed in *Roth v. Smith*, 41 Ill. 314, 315 (1866), which would explain why the Judge Advocate was able to ask Johnson, in 1862, about a suit which the Illinois Supreme Court referred to as having been brought in 1863.

[34]Mahony, pp. 452-53. The amount of the judgment was not stated.

[35]*Ill. House Jour.*, 23rd Gen. Assembly (1863), pp. 78-79 (resolution by Mr. Walker).

[36]Ibid., pp. 90 (resolution by Mr. Merritt), 113 (resolution by Mr. Wescott).

[37]Ibid., p. 133.

[38]*Illinois State Register*, 28 Jan. 1863, p. 2, col. 1.

[39] *Ill. House Jour.*, 23rd Gen. Assembly (1863), pp. 399-401; *Ill. Senate Jour.*, 23rd Gen. Assembly (1863), pp. 221, 244.

[40] *Ill. Senate Jour.*, 23rd Gen. Assembly (1863), p. 141; *Ill. House Jour.*, 23rd Gen. Assembly (1863), p. 238.

[41] *Ill. House Jour.*, 23rd Gen. Assembly (1863), p. 282 (statement of Mr. Shope).

[42] Ibid., p. 226.

[43] Ibid., p. 674, 716.

[44] Ibid., pp. 674-75, 715-16.

[45] *Congressional Globe*, 37th Cong., 3rd Sess. (1862), p. 3 (resolution by Mr. Richardson).

[46] Ibid.

[47] Ibid., p. 666.

[48] Ibid., pp. 665-66 (statement of Mr. Howe).

[49] Ibid., p. 2 (resolution by Mr. Cox); S. 103, 37th Cong., 3rd Sess. (1862).

[50] *Congressional Globe*, 38th Cong., 2nd Sess. (1865), p. 280 (resolution by Mr. Ganson).

[51] Ibid., p. 189 (resolution by Mr. Kernan).

[52] Ibid., p. 501 (resolution by Mr. Eldridge).

[53] S. 317, 38th Cong., 1st Sess. (1864).

[54] *Congressional Globe*, 38th Cong., 1st Sess. (1864), p. 3299; *Congressional Globe*, 38th Cong., 2nd Sess. (1865), p. 1048.

[55] *Congressional Globe*, 37th Cong., 3rd Sess., (1862), p. 665 (statement of Mr. Howe).

[56] *Johnson v. Jones*, 44 Ill. 142, 92 Am. Dec. 159 (1867).

[57] The court did not mention the effectiveness of the War Department orders of August 8, 1862, in suspending the writ of habeas corpus for those individuals accused of discouraging enlistments.

[58] 71 U.S. (4 Wall.) 2, 18 L. Ed. 281 (1866).

[59] 12 Stat. 755 (1863); 14 Stat. 46 (1866).

[60] *Illinois State Register* 15 July 1867, p. 1, col. 1.

[61] Breese agreed with virtually all of the majority's opinion, but wrote a concurring opinion to indicate that he did not believe, as did the majority, that the defendants should be allowed to assert on remand that they acted pursuant to executive orders, so as to disprove that they acted maliciously. 44 Ill. 142, 165-66, 92 Am. Dec. 159, 179 (1867) (Breese, J., concurring).

[62] H.C. Carbaugh, "Martial Law," *Ill. Law. Rev.*, 7 (1913), pp. 488-90. The author felt that the court erred in finding the power to impose martial law to be constitutional in nature and in stating that the right to try civilians before a military tribunal would necessarily follow from the authority of the military to arrest a civilian and detain him without answering to a petition for a writ of habeas corpus.

[83] 71 U.S. (4 Wall.) 2, 125-126, 18 L. Ed. 281, 294 (1866).

[64] *Sheean v. Jones*, 44 Ill. 167 (1867); *Carver v. Jones*, 45 Ill. 334 (1867).

[65] Klement, *Middle West*, p. 259; Marshall, p. 534.

[66] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163, 2 L. Ed. 60, 69 (1803).

[67] As Blackstone stated, whenever a legal right is invaded, there is a corresponding legal remedy, "by suit or action at law." Sir William Blackstone, *Commentaries on the Law of England*, ed. William Draper Lewis (Philadelphia: Rees Welsh & Co., 1902), p. 1041.

[68] Letter from Abraham Lincoln to Erastus Corning (12 June 1863), reprinted in Marion Mills Miller, ed., *Life and Works of Abraham Lincoln* (New York: Current Literature Pub. Co., 1907), VII, 192-93. Lincoln was also of the opinion that military arrests of civilians were constitutional whenever they were necessary, not merely in close proximity to the theatre of war.

LEGAL PROCESSES AND JUDICIAL CHALLENGES: BLACK LAND OWNERSHIP IN WESTERN ILLINOIS

Juliet E. Walker

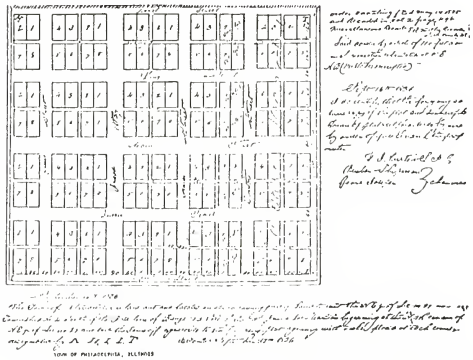


Figure 1 ORIGINAL TOWN PLAT OF NEW PHILDELPHIA, 1836.

SOURCE: Pike County Deed Record Book, 9:182, Pike Courthouse, Pittsfield, Illinois.

Western Illinois has the distinction of being the location of the only antebellum town founded by an Afro-American. In 1836 the former slave Free Frank, who had purchased his own freedom, laid out the Pike County town of New Philadelphia.[1] Unlike the antebellum agricultural settlements where free blacks lived on individual farm homesteads, although in close proximity, New Philadelphia was a spatially distinct place, specifically platted as a town for the contiguous settlement of its population.[2] In platting New Philadelphia, Free Frank staked out his town in streets, alleys, and blocks with 144 town lots, each 60 by 120 feet (see Figure 1). The town was located on the site of an eighty-acre tract of undeveloped public land, which Free Frank had purchased from the federal government for $100 in 1835.[3] This tract comprised one of nine separate land transactions, a total of 800 acres, that this black pioneer and his sons made in the 1830s (See Table 1).

Table 1
REAL PROPERTY PURCHASED BY FREE FRANK AND SONS IN PIKE COUNTY, 1835-1852

Tract	Location of Land	No. of Acres	Date of Purchase	Purchase Price	Grantor	Grantee
A	SE¼ sec. 22	160	13 Sept. 1830	$ 200	G. Elliot	Free Frank
B	N½ of N¼ sec. 27	80	11 June 1835	100	U.S. Govt.	Free Frank
C	W½ of SW¼ sec. 26	80	12 Feb. 1836	100	U.S. Govt.	Free Frank
D	NE of SW¼ sec. 26	40	23 April 1836	50	U.S. Govt.	Free Frank
E	SE of SE¼ sec. 27	40	13 May 1836	50	U.S Govt.	Squire Frank
F	NW of SE¼ sec. 26	40	10 June 1836	50	U.S. Govt.	Commodore Frank
G	W½ of NW¼ sec. 26	80	10 June 1836	112	Higbee	Frank McWorter
H	NE¼ sec. 28	160	13 Nov. 1839	480	Lamb & Dunlop	Frank McWorter
I	SW¼ sec. 22 (part)a	120	29 Sept. 1852	900	Adams	Commodore McWorter
		800		$2,042		

SOURCE: Pike County Tract Index, Hadley-Barry (T4SR5, 6W) Pike County Courthouse, Pittsfield, Illinois.
a - Final payment for this tract was made in 1852.

As landholders, the Free Frank family represented a small proportion of free blacks throughout the nation who acquired ownership in real property before the Civil War. In 1850, when the federal census first included information on real property ownership, only 7.5 percent of the nation's free black population, which numbered 439,494, owned real property.[5] Comparable property ownership rates existed in the Illinois black population, which by 1850 was only 5,436. Wide fluctuations in country and local rates were evident, however. In the decade before the Civil War, Illinois blacks lived dispersed throughout the state, although almost one-third of that population lived in western Illinois.[6] While few county studies have been undertaken to detail 1850 black property ownership rates in Illinois, that information which is available suggests that their numbers were somewhat greater in western Illinois than in other regions of the state.

In one analysis of 1850 black property ownership rates in eight Illinois counties with populations that ranged from 20 to 449 blacks, Charles Zucker found that fourteen percent of the black population owned property. Of that number, however, less than eighteen heads of household owned real property valued at more than $600.[7] In Chicago, with a black population of 323 (Cook County ranked third in the state's black population which number 383), only nine blacks in that city owned real property, ranging in value from $600 to $10,000.[8] Pike County, where Free Frank lived, ranked twenty-fifth in the state's number of blacks. Of the forty-three blacks in that county in 1850, six owned property: three held land in Pike County farm property and three owned New Philadelphia town lots.[9] By 1850, while the Free Frank family's holdings had been reduced to 600 acres, according to Illinois tax records for that year, the family's property in farm land and New Philadelphia town lots was valued at over $7000.

That there were so few black landowners in the period before the Civil War and that the value of their holdings was comparatively minimal, underscore the relative exclusion of blacks from access to America's vast landed resources. Consequently, while federal and state land laws were designed to encourage migration to and settlement of the nation's frontiers, in the competitive race for land, as federal census records show, few Afro-Americans were successful in acquiring real property before the Civil War. Moreover, once property was obtained, maintaining possession often proved more difficult than the acquisition of those holdings. More often than not, judicious consideration of racial constraints and proscriptive legislation were requisites for free blacks, not only to maintain possession but to develop their holdings.

The purpose of this paper, a brief assessment of black landholding patterns on the western Illinois frontier, is two-fold.[10] First, it will underscore the difficulties free blacks encountered in their attempt to settle the Illinois frontier during the first decade of statehood, making a general assessment of how that state's restrictive legislation and exclusionary land-claiming practices acted to discourage black land acquisition is provided. Then,

since few studies exist which specifically document landholding activities of Illinois antebellum blacks, particularly in the face of the state's discriminatory legislation,[11] this paper will also examine the activities of one antebellum black, Free Frank, who successfully maintained possession of his holdings. The legal strategies which distinguished Free Frank's efforts to promote the development of New Philadelphia, the town he founded in western Illinois, provides the focus of that discussion. As Ira Berlin has explained in his review of the impact of antebellum law on free blacks: "Free Negroes who presented their legal rights often found themselves confronted with subtle legal constructions or new laws proscribing just what they were doing."[12] The "taking" of property rights by Free Frank thus provides a case study that underscores the legal processes and judicial challenges that marked the politics of black land ownership in antebellum Illinois.

EARLY PATTERNS OF BLACK LAND SETTLEMENT IN ILLINOIS

During the westward move of free blacks in the nineteenth century to settle the frontiers of the Old Northwest Territory, their purposes for settlement often paralleled those of the white pioneers. Both sought free land and new opportunities. However, free blacks quickly found that prevailing patterns of race relations, including forced black subordination, limited liberties and restricted rights, which had existed in the settled areas, were reestablished with greater intensity in the New West.[13] In Illinois, even before statehood was achieved, black pioneers who had pushed west to settle the new territory, either as individuals or in groups, found that, while land was available for acquisition, racial constraints often limited their freedom to develop their holdings. In a letter to a the newly formed American Colonization Society, an organization that promoted the emigration of free blacks to Africa, Abraham Camp, an early Illinois black pioneer, wrote in 1818; "I am a free man of colour, have a family and a large connection of free people of colour residing on the Wabash who are all willing to leave America whenever the way shall be opened." Unwilling to confront continued racial repression, Camp added, "We love this country and its liberties, if we could share an equal right in them; but our freedom is partial and we have no hope that it will ever be otherwise here. . . ."[14]

Yet, very early in the history of the new nation, the West with its vast expanse of unsettled wilderness land was viewed as an area for the relocation of America's free black population. In 1816, the Kentucky Abolition Society had petitioned the United States Congress to allocate part of the Military Tract in western Illinois for use as a reserve for the colonization of newly emancipated slaves.[15] While Congress denied their petition, western Illinois did become the location of one of the nation's first manumission settlements, the Edwardsville Colony established in 1819. Edward Coles, the founder of this settlement, after freeing his seventeen slaves, purchased

land for them to develop as farmers and, according to the Peases, "encouraged them to be frugal and industrious, hoping that eventually they would all settle on their own farms as free and independent citizens."[16] The Edwardsville Settlement was located in a relatively unproductive area. Also, planned as a communal agricultural settlement, the plots of land allocated were too small to sustain self-sufficiency. Unable to expand their holdings, not only because of limited incomes, but also because of white hostility, few of the Edwardsville blacks were able to realize the new opportunities that the western frontiers held for whites.

The majority of black pioneers who settled the Illinois frontier during the first decade of statehood, however, came as individuals on their own initiative. While many had formerly lived in settled areas; others, such as Free Frank, had a history of land acquisitions on the frontiers. In the decade after purchasing his freedom in 1819, Free Frank had acquired almost 800 acres, which he held in both single and joint tenancy, on the Kentucky Pennyroyal frontier.[17] In another instance, James Roye, the father of Liberia's fifth president, who settled the Illinois frontier in 1826, had also lived on the Northwest frontier as early as 1802, when he first settled in Ohio. By the time of Roye's death in 1829, he had purchased a Vandalia town lot and had also acquired 400 acres of land in western Illinois. Roye died intestate, however, and it appears that neither his son nor his wife was able to recover title to his Illinois property, although as Svend Holsoe emphasized, "The Roye family was able to purchase land with apparently little difficulty."[18]

Unfortunately, purchasing land and maintaining possession were always not one in the same for free blacks on the Illinois frontier. Thus, while free blacks made their way west to settle the Illinois frontier during the first years of statehood, and while they were few in number, the presence of only a few blacks often generated bitter racial hostility as Philip Staudenraus emphasized. Not only were the early black pioneers denied due process, their presence also prompted legislation specifically designed to discourage their settlement in the state.[19]

ILLINOIS LAW DESIGNED TO DISCOURAGE BLACK SETTLEMENT

Initially, much of the racial hostilities free blacks encountered in their efforts to settle permanently in the state reflected inchoate attempts on the part of some early Illinois settlers to encourage the development of slavery in that state.[20] In their opposition to the settlement of free blacks, Illinois proslavery forces were as apprehensive as those southerners who pushed for the removal of their state's own free black population. In Kentucky, for example, the general feeling expressed was that the presence of free blacks "exerted a bad influence upon the slaves; he might harbor runaways, circulate abolition literature, receive stolen goods, make the bondsmen discontent with their lot and inspire in them a desire for freedom by revolt."[21]

Yet, despite favorable legislation and judicial sanctions, which upheld involuntary servitude in Illinois during the first two decades of Statehood, slavery would not survive in Illinois.[22] More important, the opposition to slavery which had existed in Illinois during the 1820s quickly extended to promoting the exclusion of free blacks as well. Notwithstanding severe racial constraints, Illinois' free black population increased three-fold in the 1820s, even though their numbers proportionate to the white population remained small (See Table 2).

Finding the 1819 Black Code ineffective as a means of restricting black settlement, the Illinois Sixth General Assembly, 1828-29, moved to take more effective measures to prevent the increasing settlement of blacks in that state. A senate committee, responding to a resolution, which had inquired into the "expediency and practicality" of restricting black settlement, expressed much the same opposition to free blacks as that found in the South, reporting that they were:

> Of the opinion that it expedient to pass some law to prevent the further emigration of that class of people into the state. Their residence among us, even as servants, when subject to the immediate control of a master is productive of moral and political evil; and in a state of freedom is thought more objectionable. The natural difference between them and ourselves, forbids the idea that they should ever be permitted to participate with us in the political affairs of government. . . It is believed that this state is now hourly endangered by the settlement of *free negroes*; many of whom are old and infirm and must be considered paupers, and supported by our citizens.[23]

In 1829, the Illinois Black Code was revised to provide for more stringent regulations which would discourage the settlement of free blacks. To prevent fugitives from passing themselves off as free, the act required that all blacks settling in the state had to provide certificates of their freedom. Enforcement provisions were designed to encourage cooperation from Illinois settlers. Fines would be imposed on employers who hired blacks without certificates, and rewards were offered for those who provided information leading to the apprehension of those blacks without certificates. Blacks who could not produce certificates of their freedom were to be arrested and held as fugitive slaves for one year. During the period of their incarceration, the law required that they be hired out and their wages paid into the treasury of the county where they were apprehended. The most devastating provision designed to exclude all blacks, even those with certificates, required the posting of a security bond. As that provision of the Black Code stipulated, a free black would be denied the right to settle in the state, "Until such persons shall have given bond, with sufficient security to the people of this state, for the use of the proper county, in the penal sum of one thousand dollars. . . ."[24]

That the possibility existed that there would be free blacks with certificates of freedom, who also possessed the requisite $1000 bond, the state's civil

Table 2
ILLINOIS POPULATION, 1800-1860

Year	Political Status of Illinois	Free Blacks	Slave Blacks	Total Blacks	Total Whites	Proportion of Total Blacks to Total Whites
1800	Part of Indiana Territory	163	135	298	4,577	6.11%
1810	Illinois Territory	613	168	781	11,501	6.36
1820	State	457	917	1,374	53,788	2.49
1830	State	1,637	747	2,384	155,061	1.51
1840	State	3,598	331	3,929	472,254	0.83
1850	State	5,436	–	5,436	846,034	0.64
1860	State	7,628	–	7,628	1,704,291	0.05

SOURCE: U.S. Bureau of Census, *Population of the United States in 1860: The Eighth Census* (Washington, D.C.: Government Printing Office, 1864).

laws and criminal code also included provisions that denied free blacks the rights accorded the citizens of Illinois. In antebellum Illinois, it was illegal for blacks to vote, be jurors, be witnesses in any court case against a white person or to serve in the state militia.[25] Blacks were also excluded from the benefits of a free public school education. The preamble to the act establishing free schools emphasized, "To enjoy our rights and liberties, we must understand them. . . it is therefore considered the peculiar duty of a free government, like ours, to encourage and extend the improvement and cultivation of the intellectual energies of the whole." To reinforce their intent that blacks were to be excluded from the public schools, the first section of the act specifically emphasized that the public schools of the state "shall be open to every class of white citizens between the ages of five and twenty-one years."[26]

Thus, during the early years of statehood, Illinois, by depriving blacks of civil and political rights, by establishing obstacles to opportunities for paid employment, and by denying them access to a free public school education, had indeed attempted to structure a society whereby blacks, slave or free, on attempting to settle in Illinois, would surely become discouraged in their efforts and be forced to leave. Reviewing the proscriptive legislation directed against blacks on the antebellum western frontiers, Berwanger explains that lawmakers in those states only expressed the sentiment of their constituents who demanded that "free Negroes should be discouraged from migrating to the Old Northwest." And, he explains that the reason generally given were that once blacks settled in those states, quite possibly they "might agitate for political and social equality." Berwanger also emphasizes that the greatest fear expressed by whites in those states was economic competition from free blacks.[27]

ILLINOIS' EXCLUSIONARY LANDCLAIMING PRACTICES

Access to the land would have provided free blacks an economic basis to compete with whites. In developing land on the Illinois frontiers, the Baptist itinerant John Mason Peck claimed, "Any laboring man, with reasonable industry and economy, with a family, may arrive here without any capital, and in half a dozen years be the owners of a good farm, with stock in abundance."[28] Considering the agricultural background of most blacks, especially those inclined to settle frontier areas, the assertions Illinois legislators made, that most blacks would remain paupers and thus impose an economic burden on the state, must be explained in greater detail. Particularly, the Illinois legislation, which required blacks to post a $1000 bond prior to settlement, must be viewed from a broader perspective than its anti-immigration intent, which was clearly discriminatory. Designed to discourage the settlement of free blacks, Illinois' exclusionary legislation would not only have imposed an economic hardship on prospective black settlers, ironically, it would have also provided the state with a much needed source of revenue.

Land taxes comprised the state's principal source of revenue, but as Theodore Carlson found, non-resident's taxes generated the greatest income share in state revenue (See Table 3). In the period from 1821-1832, few Illinois settlers paid land taxes because as Thomas LeDuc explains, "We know for example that in Illinois in the 1820s, thousands of rural male voters owned no land."[29] Certainly, then, the economic basis on which Illinois' black exclusion legislation rested blatantly ignored the reality of the economic status of many state's early white settlers.

Table 3
STATE REVENUE AND PERCENTAGE OF TOTAL RECEIVED FROM TAXES ON NON-RESIDENTS' PROPERTY

Fiscal Period	Total Receipts	Non-residents' Tax Receipts	Percentage
1 January 1821-27 December 1822	$45,803	$38,437	83.9
1 January 1823-30 November 1824	78,942	72,639	92.0
1 December 1824-30 November 1826	93,011	82,569	88.8
1 December 1826-30 November 1828	90,110	83,176	92.3
1 December 1828-30 November 1830	73,444	70,396	95.8
1 December 1830-30 November 1832	95,001	88,218	92.9

SOURCE. Theodore L. Carlson, *The Illinois Military Tract: A Study of Land Occupation, Utilization and Tenure* (Urbana. University of Illinois, Press, 1951), p. 51.

During the first decade of statehood, a large number of white settlers on the Illinois frontier were squatters. In the early nineteenth century, squatting, virtually universal in the settlement of the American West, had prompted the enactment of a series of legislative acts designed to provide for more reasonable conditions of purchase. Particularly, the Pre-emption Act of 1830 proved advantageous for squatters. Those who had settled a tract of land for one year prior to the enactment of that legislation were allowed to buy the land before it was offered for sale to the general public.[30] However, by the late 1820s, with severe proscriptive legislation, there were few blacks in Illinois to take advantage of the Pre-Emption Act, although in the decade from 1829 to 1830, the state's white population had increased from 53,788 to 155,061.

Frontier land-claiming practices, moreover, made it difficult for free blacks to acquire property even after public land had been put on sale. On the Illinois frontiers, squatters sometimes banded together to help each other get first choice of the land. As Carlson indicates, "Frequently, the newcomer would meet up with the uncooperative squatter, who not having purchased his land. . . would attempt to deceive the would be purchasers of the true status of the land."[31] Violence often ensued if newcomers pressed

their claims for public land available for sale. Confronted with severe legal disabilities, doubtless few blacks could rely on the judicial system to support their claims. In the face of severe racial hostilities, proscriptive legislation, and exclusionary land-claiming practices, only a small number of free blacks persisted in their efforts to acquire land on the western Illinois frontier. In many instances, the extent to which they succeeded depended on the extent to which they were able to manipulate the system of laws to their advantage, such as the Pike County town founder, Free Frank.

BLACK LAND SETTLEMENT IN THE ILLINOIS MILITARY TRACT

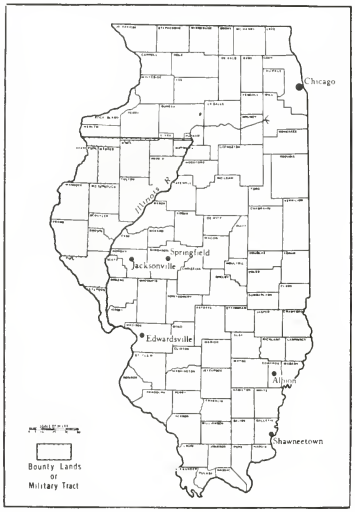


Figure 2 ILLINOIS MILITARY TRACT

Free Frank's Illinois land was located in the Military Tract. His first parcel, a 160-acre tract for which he paid $200, was purchased from a War of 1812 veteran in September, 1830, while Free Frank still lived in Kentucky.[32] Before 1831, settlement in western Illinois, particularly in the Military Tract, provided some advantages for black pioneers if title to their land was covered by a Military Bounty Land Warrant. The Military Tract, located between the Illinois and Mississippi Rivers, consisted of land set aside by the Federal Government as bounty payment for War of 1812 soldiers. More than half, 3,500,000 acres out of the total 5,360,000 acres, were reserved for veterans. The remainder, referred to by contemporaries as "Congress Land," was not put on the market for sale until 1831. Until then, only

possession of a Military Tract Bounty assured full legal protection to landholders in that region. Yet, until the 1830s, the Illinois Military Tract remained sparsely settled. Few War of 1812 veterans used their bounties to claim their land. While speculators bought up their holdings at tax sales, most prospective settlers were apprehensive over the legitimacy of tax titles in the Military Tract. Squatters were not discouraged from staking their claim to "Congress Land," however, as Carlson found, indicating that: "It is quite evident that of thirteen thousand inhabitants in the tract in Illinois in 1830 probably a goodly number of the occupiers could show no proof of title."[33]

Having purchased his land before settlement in the Illinois Military Tract, Free Frank had an advantage. Land ownership established that the black pioneer had an economic basis to be classified as self-sufficient (see Figure 3 for Free Frank's 1832 tax receipt). Then, too, by possession of a Military Tract Land Warrant, Free Frank was in a position to meet any legal challenges to the rightful ownership of his 160 acre tract. Furthermore, once the "Congress Land" was put on sale, Free Frank knew what land was available for purchase and was in his discussion of public land sales in Pike County during the frontier period, "When the land sales came off. . . there was a gathering of pioneers from the township offered for sale, at which no speculators were allowed to purchase until all settlers had made their selections. . . ."[34]

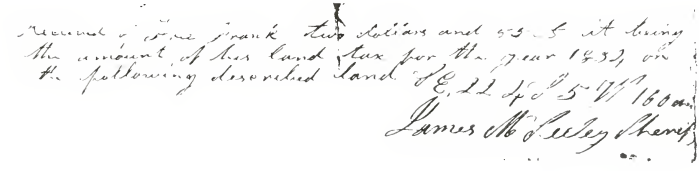

Received of Free Frank two dollars and 55 c. it being the amount of his land tax for the year 1832, on the following described land to wit, 22 of 5 W 160 acres
James McReley Sheriff

Figure 3 FREE FRANK'S LAND TAX RECEIPT FOR 1832.
$2.55 on his 150 acre tract in Hadley Township, Pike County, Illinois.

The mass marketing of "Congress Land" in the Illinois Military Tract took place in the mid-1830s. Changes in federal land laws, which provided for a reduction in minimal acres required for purchase, and the proposed building of the Illinois-Michigan Canal precipitated the land rush.[35] Reviewing the record sales of the Federal Land Office of Quincy for the 1830s, Carlson found only two tracts, 160 acres, of "Congress Land" sold in 1831 as compared to the phenomenal increase in land sales that took place in the two-year period from 1834-36. In 1834, 567 tracts, 36,292 acres, were

sold; in 1835, 4523 tracts, 383,348 acres, were sold; and, in 1836, when land sales reached a record high, 5838 tracts, 555,033 acres, were sold. Land sales fell off with the Panic of 1837, however, reaching a low of ninety-two tracts, 6620 a sold in 1842.[36]

Pike County's population increase during this period also reflected the monumental sales of "Congress Land." In 1830, only 2396 settlers lived in Pike County, but in the one-year period 1834-1835, the population increased from 3,570 (est.) to 6037; and by 1840, there were 11,728 people in the county.[37] Pike County's black population also increased. Until 1836, Free Frank's family of six were the only blacks in the county. By 1840, six more blacks had settled in Pike.[38] Of the three black heads of household, who purchased land in Pike County, interestingly, the holdings they acquired were located in close proximity to Free Frank's Hadley Township farm homestead, which he had established on the 160 acre tract purchased in 1830.[39] The absence of documentary evidence makes it difficult to determine whether their decision was by choice or that exclusionary land-claiming practices discouraged their acquisitions elsewhere in Pike County.

FREE FRANK AND THE "TAKING" OF PROPERTY RIGHTS

In 1835, Free Frank made his first purchase of "Congress Land," an 80 acre tract located directly south of his Hadley Township farm. In the following year, it became the site where he platted the town of New Philadelphia.[40] Town platting was considered a particularly profitable venture in the Illinois Military Tract in the mid-1830s, and town founders in this area competed in promoting growth of their towns.[41] At the time Free Frank founded New Philadelphia, however, his primary concern centered on the means available for a free black in Illinois to protect his property. By 1836, besides platting a town, the black pioneer had purchased a total of 520 acres of land for $662 (see Table 1). Yet, in construction and application, state civil laws and Black Codes imposed limitations on free blacks in exercising full possessory rights in their property ownership.

Limited from launching a direct challenge to those laws, Free Frank's initial activities in the "taking" of property rights, in 1836, included petitioning the Illinois General Assembly for the right to assume a legal surname. Once his was approved, however, Free Frank petitioned the state legislature again, requesting that the name taken would be the one in which he would have the right to "sue and be sued, plead and be impleaded, purchase and convey both real and personal property. . . ." In its entirety, the act, when approved in 1837, stipulated:

> Sec. 1. *Be it enacted by the people of the State of Illinois represented in the General Assembly*, That the name of Free Frank, of the county of Pike and State of Illinois, be and is hereby changed to that of Frank McWorter, by which latter name he shall hereafter be called and known, and sue and

> be sued, plead and be impleaded, purchase and convey both real and personal property in said last name, and the children of said Free Frank shall hereafter take the name of their father, as changed and provided for by this act.
>
> Sec. 2. This act to be in force and after its passage. Approved 19th January, 1837.[42]

While it would appear that the only purpose of the act was to provide Free Frank with a legal surname, in its construction, however, "An Act to change the name of Free Frank," while perfunctory in intent, indirectly provided the black landholder with statutory recognition that supported his right to acquire and protect property. In this instance, then, Free Frank's initial actions to acquire the possessory right inherently attached to property ownership in this country, reflected a "taking" of property rights by virtue of American Common Law balanced by public interest and constitutional guarantees.

Under American Common Law, economic rights are closely tied to property rights. So that the full resources of the community can be utilized for the common good, in the early period of the nation's expansion westward, the public interest in acquiring private property even superceded substantive limitations on state legislative action that discouraged the acquisition of private property by free blacks. Thus, while the property rights indirectly acquired by Free Frank stood in contravention to Illinois Civil Laws and Black Codes, paradoxically, the national interest, reflected in federal land policy, took precedence. Based on the rapid disposal of the public domain and a policy that advocated that all land should be made private property as rapidly as possible, the intent behind Free Frank's 1836 petition, although in conflict with state policy issues regarding blacks, conformed with national policy at that time. Consequently, while state action that limited the rights of free blacks could be sustained, for such interests were far removed from federal constitutional guarantees before 1865, the success of Free Frank's petition, indirectly reflected an unconscious articulation of federal constitutional doctrine based upon the contract clause and private property rights. In this instance of countervailing interests, federal policies prevailed.

The legislation which provided Free Frank with access to the law so that he could protect his property provides an example of the discretionary application of antebellum American law in its application to free blacks. As Berlin has explained, changes in antebellum laws usually limited their freedom rather than provide for an expansion of their rights. Yet petitions by free blacks to state legislatures for special privileges were not unusual, particularly in the South, where they often appealed for rights denied them under enrolled laws. Usually, the success of those petitions depended to a great extent on the endorsement of whites in the area where the free blacks lived. And, usually, the free blacks whose petitions were successful were

those whose economic activities were considered important to the communities in which they lived.

Free Frank's petition was supported by one of the most prominent men in Pike County, William Ross, a State Senator at the time the petition was presented to the Illinois General Assembly. Ross's settlement in Pike County dated back to the early 1820s. From that time on he had been active in promoting the settlement and development of Pike County; first by speculating in Military Land bounties, and, then, by town founding, particularly to support the lumber and grain mills he had established.[43] In the case of Free Frank's contribution to the economic development of Pike County, his early success as a farmer in an undeveloped wilderness area demonstrated its potential as a productive agricultural region for settlement. That Free Frank had founded a town was also important. Until the mid-1830s, when New Philadelphia along with twenty-one other towns were founded, only four towns had been established in Pike County.[44]

William Ross was also one of fourteen white signatories of Free Frank's 1837 Certificate of Good Character, a document also required by Illinois law for free blacks who resided in the state. In this instance, a specific reason that might suggest Ross's support of Free Frank's petition to the Illinois General Assembly is provided in the Certificate. After noting that Free Frank's purpose for founding a town was "to apply the proceeds of the Sales for the purchase of his family yet remaining as Slaves," the final paragraph concluded with this statement: "We therefore recommend this coloured man Frank as an honest industrious man to all persons who take an interest in his behalf and that of suffering humanity in slavery."[45] The Certificate of Good Character, however, served to provide more than a testament of Free Frank's character. It was another document that offered written evidence to confirm Free Frank's property ownership. For the signatories, all prominent Pike County whites, also noted that they had known Free Frank "for several years as a Farmer, owning and residing upon some land purchased himself. . ."[46]

Antebellum blacks were never secure in the ownership of their property. As a former Indiana black settler who moved to Ontario, Canada in the period before the Civil War reported, "I had a good deal of property here,. . . [but] it was not safe, for any loafing white might destroy or steal, and unless a white man were by to see it, I could get no redress."[47] In the case of Free Frank, any prospective claim jumper would have to consider very carefully the legal opposition that could be encountered from a black land owner whose property was covered under valid land titles. The special legislation, which allowed Free Frank specific rights in protecting his property, would also serve as a deterrent. More importantly perhaps, Free Frank's property ownership was supported by prominent whites, including the Honorable William Grimshaw, one of Pike's early lawyers. Finally, as a further step to prevent the alienation of his property, Free Frank and his wife Lucy, whom he had taken as his wife in 1799, were formally married under Illinois law.

With this 1839 marriage, Free Frank had thus provided a legal means to assure Lucy's dower rights in the property upon his death.[48]

Acquiring the legal right to protect his property provided one of the few advantages that Free Frank would have under state law in promoting the growth of his town. Until the 1870 Illinois Constitution, there were only two general state policies concerning towns. Under the Illinois Town Platting Act, no provisions were included that made it illegal for blacks to plat a town.[49] Probably, Illinois legislators had not anticipated that any blacks would attempt to establish a town in a state so openly hostile to their settlement. That omission, however, provided the basis that prompted Free Frank to plat a town. In the plat recorded by the County Surveyor, he noted,

> Sept. 16, 1836
> I do certify that the foregoing is a true copy of the plat and survey of the Town of Philadelphia made by me by order of Free Frank the proprieter.[50]

The Illinois Town Incorporation Act, however, allowed only whites to incorporate a town, specifically stipulating, ". . . whenever the white males over the age of twenty-one years, being residents of any town in this state. . . shall wish to become incorporated. . . it shall be lawful for the said residents, who may have resided six months therein or who shall be the owner of any freehold property therein [to incorporate]. . ."[51] For town proprietors, town incorporation enhanced the value of town lots offered for sale. And, for prospective town lot purchasers, an incorporated town suggested a high potential for growth. Incorporation provided advantages, including state funds for improvements and for financing public utilities. Proprietors of incorporated towns were also in a favorable position to bid for the location of state institutions. While the state required a minimum population of 150 for incorporation, it was not unusual for towns with less than that number to petition the General Assembly for approval to incorporate.

In the initial promotion of their towns, road-building activities offered special advantages for Pike County town founders. Agriculture was the state's major industry, and most prospective settlers, whether townspeople or farmers, realized that not only were "expanding farm markets. . . the key to prosperity, but of equal importance was the need for cheap and efficient transportation of goods to markets."[52] In this instance, Pike County, situated between the Illinois and Mississippi rivers, with no area more than twenty miles from either, was particularly attractive for the location of new settlers. In Pike County, the construction of county and state roads could be undertaken immediately to provide access to the rivers for the shipment of farm produce to eastern markets. State laws on road-building, then, would be important in Free Frank's efforts to promote the development of New Philadelphia.

The usual procedure for a road to be built was that a demonstrated need had to exist. Under state law, a petition with a minimum of thirty-five signatures was required in which the signatories requested the county to

build one. Once the county commissioners approved the petition, several men, known as "viewers" would be appointed to survey the area through which the road was to be built. If a favorable report was presented to the county commissioners, a road-building order would be issued.[53] The importance of New Philadelphia's location is evident in the Pike County Commissioners Records, which provide a detailed history of roadbuilding as it affected Free Frank's town.[54] (See Figure 4 of New Philadelphia-Rockport Road.)

Until 1840, Pike County Commissioners responded favorably to petitions for road-building in the area of New Philadelphia. After that time, however, white Pike County town founders, using their political influence and prestige, were in a much more favorable position to persuade both the "viewers" and the commissioners to approve road-building plans that proved favorable in encouraging the growth of their towns. The 1840 county order that approved the relocation of part of an east-west road, which initially ran through New Philadelphia from Griggsville in Eastern Pike to Kinderhook, a town located near the Mississippi River, provides one example of the limited influence of a black town founder in influencing county road-building activities.

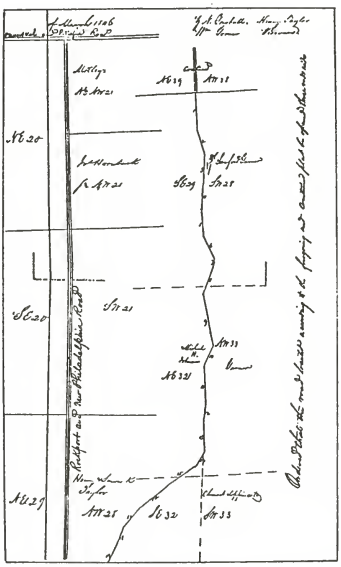


Figure 4 PIKE COUNTY SURVEYOR'S PLAT OF THE NEW PHILADELPHIA-ROCKPORT ROAD, 1846.

SOURCE: Ibid., p. 150

In this petition the "viewers recommended that this important east-west Pike County road be relocated" so that instead of running directly through New Philadelphia, it would run directly through the town of Barry, which by 1859 would become one of Pike's three most important towns. That this was a state road, permission to relocate it had to be obtained from the Illinois General Assembly. Barry's proprietors, including William Ross, were influential Pike County businessmen with important political connections in Springfield. Consequently, once the pattern was presented, the General Assembly approved it in "An Act to relocate a certain State Road in Pike County." The law was in force as of February 1, 1840, stipulating that several people be appointed "to review and relocate so much of the State road, leading from Griggsville in Pike County, to Kinderhook as is situated between New Philadelphia and Kinderhook."[55] That Illinois law prevented blacks from voting or holding office limited Free Frank's influence as a town proprietor, however. Lacking political clout, the black town founder was at a disadvantage. County and state officials were predisposed to act favorably in the interests of town proprietors who could offer some political reciprocity. Free Frank's activities to promote New Philadelphia's development, then, had to be of an apolitical nature, which would not require state approval.

Free Frank's attempt to build a school, the Free Will Baptist Seminary, provides a noteworthy example of the black town founder's efforts to promote the development of his town. While New Philadelphia did have a state supported public school, Illinois law prohibited the attendance of black children. Both blacks and whites lived in New Philadelphia, however, and in the 1848 subscription list Free Frank circulated to secure funds for its construction, both races are shown as contributors. Free Frank donated two full blocks, sixteen town lots, for the school site, indicating that once constructed, the Free Will Baptist Seminary was "to be for the sole benefit of the students of the Seminary without distinction of person."[56] Unfortunately, the contractors never completed construction of the seminary. Their failure proved not only disappointing to Free Frank in his role as a town proprietor, but also provides, perhaps, one of the most blatant examples of the attempts by whites to force the alienation of property owned by blacks. Eventually, as he attempted to regain his property, the town lots donated for the school's site, a legal suit developed between Free Frank and the contractors.

Faulty contractual agreements provided the basis of the suit. There were two contracts, a land deed and a promissory note, both made on the same date. Implied in both contract was the agreement that the contractors would receive a certain number of town lots if the school was constructed within a two-year period. If not, the contractors would be entitled to some of the lots, but only after paying Free Frank ninety dollars for them, according to the promissory note as it was subsequently established in court (See Figure 5 for a copy of the promissory note). Once the agreement was reached, the

contractors proceeded somewhat half-heartedly to construct the seminary, but they stopped construction six months before expiration of the contract.

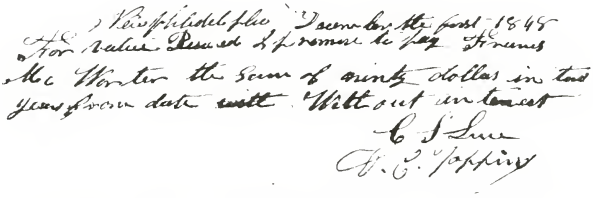

Philadelphia December the first 1845
For value Received I promise to pay Frank
Mc Worter the sum of ninty dollars in two
years from date with Without interest
C. J. Luce
H. C. Topping

Figure 5 PROMISSORY NOTE OF NINETY DOLLARS.

One of the contractors, Luce, perhaps to intimidate Free Frank from suing, compiled a list of debts in the amount of $60.90 that he claimed Free Frank owed. Free Frank refused to pay, but waited until the two-year period of the contract had expired before he moved to sue Luce for defaulting on the contract. One day before the scheduled court hearing, however, Luce arranged to buy the lots agreed to under the terms of the promissory note. With the lots purchased, once the case came to trial, the jury acted only on the matter of the debts, notwithstanding that Luce's failure to perform could not be adequately relieved by monetary compensation in the purchase of the lots. And, in their decision, the jury found for Luce: "Judgement in favor of defendent in said sum of fifteen dollars and 66/100 and costs of suit. . . . April 17, 1851."

Within two weeks of the decision, on May 3, 1851, Free Frank filed an appeal but rather than requesting a jury trial called for an arbitration hearing, which was scheduled for the first Monday in October, 1851. Arbitration offered advantages for Free Frank beyond the fact that both the place of arbitration and arbitrators would be decided by the mutual consent of the parties involved in the dispute. "It is also said to be preferred because it shuns 'technical' rules of evidence and procedure, and promotes sounder fact-finding, particularly as to complex technical issues. It is thought by some to produce decisions more in accord with popular justice."[57] Notwithstanding, Free Frank's attorney objected to an arbitration hearing as he indicated in a letter, expressing his inability to present: "I am not very favorable to arbitration when I have a good case at hand."

There were two issues involved in the case, however. In appealing in the April, 1851 decision, Free Frank had initiated a counter-claim by compiling a list of debts in the amount of $64.84½, that he claimed Luce owed him. In addition, Free Frank also appeared for the return of the lots he had sold Luce for ninety dollars. Only whites were called as witnesses at

the hearing since Illinois law did not allow blacks to testify in cases in which whites were involved. Notwithstanding, after hearing the testimony of the white witnesses, the arbitrators decided in favor of Free Frank. On the matter of debts, the decision of the arbitrators was that: "We determine and decide that the same shall be considered balanced without allowance to each." In the matter of the town lots, after thoughtful decision, the arbitrators ordered Luce to return the lots of Free Frank. Doubtless, the indefiniteness of contract provisions, which had resulted in partial performance of the contractors, provided the basis for the arbitrators' decision, which in part held that:

> Whereas said Deed does not designate which lots were sold from those donated, and it appears by the evidence in this cause that the Seminary aforesaid, was to be completed in the term of two years from the date of said deed, or otherwise the deed aforesaid was to be canceled and annuled and whereas the time has expired and the Seminary has not been completed, but, has been entirely abandoned We the arbitrators aforesaid to award and decide that the said note for ninety dollars and the deed aforesaid are hereby recinded, canceled and annuled and that. . .the said McWorter is entitled to and may take possession of all said lots. . . and occupy the same as fully and completely as if the Deed aforesaid had never been executed.[58]

That the arbitrators found for Free Frank doubtless provides a rare example of a free black receiving due process of law in the antebellum Illinois court system. Their holding also suggests the endorsement of Free Frank as the proprietor of New Philadelphia. Had Luce succeeded in winning the case, he would have owned several New Philadelphia town blocks.[59] By 1850, Free Frank's town had developed into an important agricultural multi-trading service center, providing goods and services for the townspeople and the farm population in its hinterland. With a blacksmith shop, a wheelwright shop, two shoemaking shops, a cabinet-making firm, a general store, in addition to a post office and a school, which also served as a church and courthouse, New Philadelphia's occupational structure compared favorably with that of other frontier towns in Pike County.[60] Located at the crossroads of three important county roads, New Philadelphia was also a stagecoach stop. And, by 1850, within only fourteen years of its founding, Free Frank's town was important enough to be placed on maps found in the more widely circulated mid-nineteenth century travel gazetteers and business directories.[61]

ANTEBELLUM BLACK LAND ACQUISITIONS—MYTH AND REALITY

As a newly developing nation, with an agrarian based economy, land ownership in antebellum America was a source of economic independence, providing the means to wealth and power. For Free Frank, as a black pioneer, land ownership enabled him to purchase thirteen family members from slavery. In the period from 1835 until his death in 1854, Free Frank

paid approximately $12,000 for his family's freedom with money earned from the development of his holdings.[62] Profits from the sale of farm produce and livestock, from land speculation, and from the sale of New Philadelphia town lots comprised the principal sources of funds used by Free Frank to buy his family's freedom. While it is important to emphasize that the profitable development of Free Frank's holdings can be attributed to his impressive agricultural skills and entrepreneurial expertise, it is also valuable to consider an additional factor which accountably can be understood as the underlying reality of Free Frank's economic success. On his initial settlement in Illinois, Free Frank not only had acquired sufficient capital to purchase a 160-acre tract, he had also accumulated from his Kentucky land speculation activities the minimum investment funds necessary to underwrite farmmaking costs on the Illinois frontier in the 1830s.[63]

By 1837, as Mitchell reported, the estimated cost for establishing a profit-making 160-acre commercial farm unit required a minimal investment in the amount of $745, which included the following average costs: $200 for the purchase price of the land at $1.25 per acre; $320 for breaking up the prairie at $2.00 per acre; $175 for fencing in four fields; and, $200 for a cabin, corncribs, and stables.[64] Thus, on the early antebellum Illinois frontier, a substantial financial outlay was essential for pioneer farmers to move beyond self-sufficiency. Yet few pioneers, black or white, possessed the necessary venture capital required to establish a profitable commercial agricultural unit, especially from the initial point of settlement on the antebellum Illinois frontier. One must also bear in mind, too, that several years would elapse before a farm would pay off, particularly when considering agricultural prices and crop yields at that time.[65]

But far more critical for the vast majority of free blacks, the reality of establishing a farm and developing a livelihood on the nation's antebellum frontiers involved more than just settling on good land in a favorable location. Even in the 1830s, when a minimal forty-acre tract could be purchased for $50, few black families could accumulate that amount from the limited earnings available to them in the settled areas. And, while land was available for preemption, exclusionary land-landclaiming practices often made it difficult for black pioneers to stake their claims, although as contemporary accounts show, establishing a self-sufficient farm homestead was not unusual for the vast majority of white pioneers.

Moreover, after 1840, it would become increasingly difficult for free blacks to purchase land on the antebellum frontiers. For beginning with the Pre-Emption Act of 1841, increasingly, attempts were made to exclude free blacks from legally acquiring land under this statute. At the same time, in some states where public land was still available for settlement, by the 1850s Illinois, Indiana, Iowa, Oregon and the New Mexico Territory had passed laws making it illegal for free blacks to migrate to their states for settlement. In that same decade, southern states began passing laws

requiring free blacks to leave those states or choose a master and return to slavery. Then in 1857, with the infamous Dred Scott decision, federal intervention operated to limit free blacks from access to the land. On the basis of the non-citizenship status of Afro-Americans, the United States General Land Office, as Herbert Aptheker shows, made attempts to deny the validity of land claims staked out by blacks who had acquired land under the 1841 Pre-Emption Act. Thus, by the time of the Civil War, as Leon Litwack explains in his study of antebellum free blacks, "any Negro who desired to settle on the newly open western land faced not only the anti-immigration laws of various states and territories but the open hostility of the federal government."[66]

Free Frank's real property acquisitions reflected federal laws and policies that did not preclude the sale of land to blacks. Yet, the monumental efforts made by Free Frank, particularly his legal strategies, in the "taking" of property rights, only underscore the innumerable difficulties free blacks encountered in the competitive race for land on the nation's antebellum frontiers. While for white pioneers, various federal land policies and laws from the 1790s on were passed to make it easy for them to acquire land. Public land laws, first, allowed for easy credit purchases on large tracts, then cash sales for reduced acreages, and finally, preemption rights. Eventually, by the 1850s, virtual free land grants through homestead acts were being discussed. Moreover, throughout this period, as the new states entered the Union, various legislative acts were passed to encourage their unrestricted settlement.

Notwithstanding the policy of the federal government and new states to encourage westward settlement, few free antebellum blacks moved west to acquire land and establish independent self-sufficient farm homesteads. On the Old Northwest frontiers, pervasive racism and severe proscriptive legislation discouraged their acquisition of land. Thus, by 1860, when the nation's total black population numbered 488,000, somewhat less than 6500 lived in the five free states carved out of the region of the Old Northwest Territory. Before the Civil War, then, Frederick Jackson Turner's supposition, that in the West, "free lands meant free opportunities," did not apply to free blacks.

NOTES

[1]Pike County Deed Record Book, 9:183, Pike County Courthouse, Pittsfield, Ill. Existing studies which detail black town founding activities begin with the post-Civil War period. From the late 1860s until the early 1900s, over 100 black towns were formed. Many were located in Kansas and Oklahoma. See, Norman L. Crockett, *The Black Towns* (Lawrence, Kan.: The Regents Press of Kansas, 1979), which examines five black towns in Oklahoma and Kansas. Also see, Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction* (New York: Alfred A. Knopf, 1979); William E. Bittle and Gilbert Geis, "Racial Self-Fulfillment and the Rise of an All-Negro Community in Oklahoma," *Phylon* 18 (1957), 247-60; Kenneth

Hamilton, "The Origin and Early Development of Langston, Oklahoma," *Journal of Negro History* 61, 3 (1977): 276; and, Harold Rose, "The All-Negro Town: Its Evolution and Function." *Geographical Review* 53 (1965), 376.

[2]Julie E.K. Walker, *Free Frank: A Black Pioneer on the Antebellum Frontier* (Lexington: University Press of Kentucky, 1983), pp. 113-19. Also see for discussion of black agricultural settlements, William H. Pease and Jane Pease, *Black Utopia: Negro Communal Experiments in America* (Madison: State Historical Society of Wisconsin, 1963); E. Franklin Frazier, *The Negro Family in the United States* (Chicago: University of Chicago Press, 1939); and, W. Sherman Savage, *Blacks in the West* (Westport, Conn.: Greenwood Press, 1976).

[3]Pike County Deed Records Book, 23:46, Pike County Courthouse, Pittsfield, Ill.

[4]For an examination of the tax receipts which detail the value of the Free Frank family landholdings, see Julie E.E. Walker, "Free Frank and New Philadelphia: Slave and Freedman, Frontiersmen and Town Founder," (Diss. University of Chicago, 1976), pp. 299-309

[5]J.B.D. De Bow, *Statistical View of the United States* (Washington, D.C.: A.O.P. Nicholson, 1864), pp. 103, 131.

[6]U.S. Bureau of Census, *Seventh Census of the United States, 1850: Statistics of the United States* (Washington, D.C., 1853).

[7]Charles Noye Zucker, "The Free Negro Question: Race Relations in Antebellum Illinois, 1801-1860," (Diss. Northwestern University, 1972), p. 326.

[6]U.S. Bureau of Census, "Population Schedules of the Seventh Census of the United States, 1850, Illinois, Chicago," (Washington, D.C.: National Archives and Records Service, Manuscript Microcopy M-432, reel 124).

[9]U.S. Bureau of Census, "Population Schedules of the Seventh Census of the United States, 1850, Illinois, Pike County (Washington, D.C.: National Archives and Records Service, Manuscript Microcopy M-432, reel 124).

[10]For an expanded discussion of antebellum black landholding patterns see, Julie E.K. Walker, "Afro-American Land Settlement Patterns in Historic Perspective," introductory essay in "Historic Explorations of Afro-American Land Settlement Patterns," (unpublished manuscript); Also see, Walker *Free Frank*, pp. 195-96, n77; p. 204, n. 11.

[11]Most studies which detail antebellum Afro-American property holdings have concentrated on the South. For two seminal studies see, Luther Porter Jackson, *Free Negro Labor and Property Holdings in Virginia, 1830-1860* (New York: Appleton Century, 1942) and John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill: University of North Carolina Press, 1943). For a general survey see, Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Random House, Pantheon Books, 1974). The most comprehensive state study of antebellum black landholding activities for the North is provided by Emma Lou Thronbrough, *The Negro in Indiana: A Study of Minority* (Indianapolis: Indianapolis Historical Bureau, 1957).

[12]Berlin, *Slaves Without Masters*, p. 9.

[13]Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana: University of Illinois Press, 1967), pp. 18, 20, 24, 27-29, and 34.

[14]Carter G. Woodson, *The Mind of the Negro as Reflected in Letters During the Crisis, 1800-1860* (Washington, D.C.: The Associated Publishers, 1926), p. 2.

[15]"Petition for Bounty Lands for Freedmen, Dec. 16, 1818," in *Bounty Lands Revenues*, vol. 4 of *New American State Papers: Public Lands* (Wilmington, Del.: Scholarly Resources, 1973), p. 66.

[16]Pease and Pease, *Black Utopia*, pp. 46-49.

[17]For information on Free Frank's Kentucky land purchases see, General Index to the Surveyor's Office Books. Surveyor's Office Books, Real Estate Conveyances Books; General Index to Real Estate Conveyances, Pulaski County Courthouse, Somerset, Ky., and Land Office Warrants, nos. 5805, 16466, 16468 and 16470, Kentucky Secretary of State, Land Office, Frankfort. Also see, Walker, *Free Frank*, pp. 54-59.

[18]Svend E. Holsoe, "A Portrait of Black Midwestern Family During the Nineteenth Century: Edward James Roye and his Parents," *Liberian Studies Journal*, 3, (1970-71), 41-52.

[19]Philip J. Staudenraus, *The African Colonization Movement: 1816-1825* (New York: Columbia University Press, 1961), pp. 136-137.

[20]For a review of Illinois slavery during this period see, Norman Dwight Harris, *History of Negro Slavery in Illinois and of the Slavery Agitation in that State* (Chicago: A.C. McClurg & Co., 1906).

[21]J. Winston Coleman, Jr., *Slavery Times in Kentucky* (Chapel Hill: University of North Carolina Press, 1940), p. 217.

[22]Illinois slavery existed under the constitutional provision that allowed for indentured servitude, Illinois *Constitution* (1818), art. 6, sec. 3. For judicial decisions that supported indentured servitude in Illinois see, Phoebe v. William Jay, Breese Reports 207 (Ill. 1828); and, Nance V. Howard, 1 Breese 242 (Ill. 1828). Also see, Harris, *Negro Slavery in Illinois*, pp. 99-123.

[23]Illinois, General Assembly, Senate, *Journal*, 1828-29, pp. 182-83.

[24]See Illinois, *Revised Laws* (1833), pp. 457-62, for the Black Code, "An Act Respecting free Negroes and Mulattoes, Servants and Slaves." Also see, Elmer Gertz, "The Black Laws of Illinois," *Journal of the Illinois State Historical Society*, 56 (1963), 454-73.

[25]These restrictions can be found in, Illinois, Constitution (1818), art. 2, sec. 27 and art. 5, sec. 1. Also see, Illinois *Revised Laws* (1833), Criminal Code, sec. 16, which makes it illegal for blacks to give testimony for or against whites; and sec. 1, which makes it illegal for blacks to serve on either gran or petit juries.

[26]Illinois, *Revised Laws* (1833), p. 556.

[27]Berwanger, *Frontier Against Slavery*, pp. 18-24, 27-30, and 34.

[28]John M. Peck, *A Gazetteer of Illinois: In Three Parts* (Jacksonville, Ill.: R. Goudy, 1834), p. 110.

[29]Thomas LeDuc, "History of Appraisal of U.S. Land Policy to 1862," in *Land Use Policy and Problems in the United States*, ed., Howard W. Ottoson (Lincoln: University of Nebraska Press, 1963), p. 11.

[30]For information on federal laws that determine the survey, sale and distribution of public land see, U.S., Congress, House, *General Public Acts of Congress, Respecting the Sale and Distribution of the Public Lands*, 2 vols. (Washington, D.C., 1838); idem. *Laws of the United States. . . upon Which the Public Land Titles in Each State and Territory Have Depended,*

House Misc. Doc. 45, 47th Cong., 2d sess., 1881, parts 2-3; idem. *The Public Domain: History and Statistics*, prepared by the Public Lands Commission, House Misc. Doc. 45, 47th Cong., 2d sess., 1881, part 4; and U.S. Congress, *American State Papers*, Class VIII, *Public Lands*, vols. 3-6 (Washington, D.C., 1832-1861). Also see, Thomas Donaldson, Comp., *The Public Domain: Its History, with Statistics*, (Washington, D.C.: U.S. Government Printing Office, 84); Benjamin Horace Hibbard, *A History of Public Land Land Policies* (New York: Peter Smith, 1939); and, Malcolm S. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York: Oxford University Press, 1968).

[31]Theodore L. Carlson, *The Illinois Military Tract: A Study of Land Occupation, Utilization and Tenure* (Urbana: University of Illinois Press, 1951), p. 29. Also see, Allan G. Bogue, "The Town Claim Clubs: Symbol and Substance," in Vernon Carstensen, ed., *The Public Lands: Studies in the History of the Public Domain* (Madison: University of Wisconsin Press, 1939), p. 47. For landclaiming activities in Pike County, where Free Frank lived, see, Chas. C. Chapman, *History of Pike County, Illinois* (Chicago: C.C. Chapman & Co., 1880), p. 797.

[32]Pike County Deed Record Book, 23:46 Pike County Courthouse.

[33]Carlson, *Military Tract*, pp. 1-9. Also see William V. Pooley, *The Settlement of Illinois from 1830-1850*, Bulletin of the University of Wisconsin, History Series, no. 1 (Madison: University of Wisconsin Press, 1908), pp. 327 and 399.

[34]Chapman, *History of Pike County*, p. 797.

[35]John Leonard Conger, ed., *History of the Illinois River Valley*, (Chicago: S.J. Clarke Publishing Co., 1932) I. 168. Also see, Chapman, *History of Pike County*, p. 515.

[36]Carlson, *Illinois Military Tract*, p. 52.

[37]Population figures for 1834 were obtained from Peck, *Gazetteer of Illinois*, pp. 23-24; for 1835, Samual Augustus Mitchell, *Illinois in 1837* (Philadelphia: S.A. Mitchell, 1837), p. 49. For 1840, U.S. Bureau of the Census, *Sixth Census of the United States, 1840*.

[38]U.S. Bureau of the Census, "Population Schedules of the Sixth Census, 1840, Illinois, Pike County (Washington, D.C.: National Archives and Records Service, Manuscript Microcopy M-704, reel 67).

[39]Federal Tract Book S: Quincy, Township 4S Range 5 West, 701:17-22. Illinois State Archives, Springfield.

[40]Federal Field Notes, vol. 236, Illinois State Archives, Springfield.

[41]Juliet E.K. Walker, "The Origin of Agricultural Towns in Nineteenth Century Illinois: Pike County, 1827-1877," *Journal of the Illinois State Historical Society* (Forthcoming, 1984).

[42]Illinois, *General Assembly, Laws. . . Passed by the Tenth General Assembly, December, 1836*, p. 175. The bill as it was initially submitted can be found in, Enrolled Law no. 2031, H.R. no. 1813, Box 48 Illinois State Archives, Springfield.

[43]Walker, *Free Frank*, pp. 67-68, 79; and, Chapman, *History of Pike County*, pp. 428, 782.

[44]Walker, "Origins of Agricultural Towns."

[45]Certificate of Good Character for Free Frank, Free Frank (McWorter) Papers, Thelma McWorter Wheaton, Chicago, Illinois.

[46]Ibid.

[47]Benjamin Drew, ed., *A North-Side View of Slavery, The Refugee: or The Narratives of Fugitive Slaves in Canada Related by Themselves* (Boston: 1856), pp. 272-73.

[48]County Marriage Records, Pike County Courthouse, Chapman, *History of Pike County*, p. 739.

[49]Illinois, *Revised Laws* (1833), pp. 599-602, "An Act Providing for the Recording of Town Plats."

[50]Pike County Deed Record Book, 9 183.

[51]Illinois, General Assembly, *Laws. . . Passed by the Seventh General Assembly, Session, December, 1830*, pp. 82-87. "An Act to Incorporate the Inhabitants of Such Towns as May Wish to be Incorporated."

[52]Carlson, *Military Tract*, p. 95.

[53]For state laws regarding road building, see, Illinois, *Revised Laws* (1833), pp. 539-545; and, Norman Higgins Purpole, ed., *A Compilation of the Statutes of the State of Illinois of a General Nature, in Force January 1, 1856*, 2 vols. (Chicago: Keen & Lee, 1856), 2: 1038-59.

[54]Pike County Commissioners Records (1832-38), 2: 371, 3843, 508 and 533; and, Pike County Commissioners Records (1834-44), 3: 218, 220.

[55]Illinois, General Assembly, *Laws. . . Passed by the Eleventh General Assembly, Special Session, 1839*, pp. 129-130.

[56]Unless otherwise indicated, information on the building of the Free Will Baptist Seminary can be found in, Pike County Circuit Court Records, Frank McWorter v. C.S. Luce and D.C. Topping (1851), case no. 3787, Pike County Courthouse, Pittsfield, Ill. Also see, Walker, *Free Frank*, pp. 136-44.

[57]Maurice Rosenburg and Jack B. Weinstein, *Elements of Civil Procedure* (Brooklyn: Foundation Press, Inc., 1962), p. 1248.

[58]McWorter v. Luce.

[59]For information on New Philadelphia town lots owned by Luce see, Pike County Deed Record Book Town Lot Index, "Phildelphia," pp. 46-61 and 269-271, Pike County Courthouse, Pittsfield, Ill.

[60]Walker, *Free Frank*, pp. 130-136; and, Julie E.K. Walker, "Occupational Distribution of Frontier Towns in Pike County: A Census Survey," *Western Illinois Regional Studies* 5 (1982), 152-53.

[61]See, *Colton's Traveler and Tourist's Guide-Book through the United States* (New York, 1850); and Charles G. Colby, *Handbook of Illinois, Accompanying Morse's New Map of the State* (New York: R. Blanchard, 1854).

[62]Walker, *Free Frank*, p. 162.

[63]Ibid., p. 68, "By the time Free Frank was ready to leave for Illinois, he had secured $355.50 from his land sales. . ." This amount was in addition to the $200 previously paid for the 160 acre tract purchased before the sale of his Kentucky land.

[64]Mitchell, *Illinois in 1837*, p. 70.

[65]Walker, *Free Frank*, p. 88, for Illinois farm prices in the 1830s. For the 1840s on see, Allan G. Bogue, *From Prairie to Corn Belt: Farming on the Illinois and Iowa Prairie in the Nineteenth Century* (Chicago: University of Chicago Press, 1963), pp. 169-181; and, Clarence H. Danhof, "Farm-Making Costs and the 'Safety Valve': 1850-1860," *The Journal of Political Economy*, 49 (June, 1941), 317-59.

[66]Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961), pp. 47-50; and, Herbert Aptheker, ed., *A Documentary History of the Negro People in the United States* (New York: Citadel Press, 1951), pp. 447-48.

THE CRIME, TRIAL, AND EXECUTION OF WILLIAM W. LEE OF EAST BURLINGTON, ILLINOIS

John Lee Allaman

In the year 1876, the United States celebrated the 100th anniversary of the founding of the country with pageantry and rejoicing. Henderson County, Illinois contributed its part to the celebration by collecting material for a county history which was eventually published in 1882. A seamy contribution to the Centennial celebration in Henderson County was the execution of Bill Lee for murder at the county jail on June 16, 1876, which was the only execution ever held in the county.

Bill Lee's execution drew a large amount of publicity in western Illinois. The hanging of Lee was even reported in the *Chicago Daily Tribune* for June 17, 1876. One reason for the avid interest in Lee was the gruesomeness of his crime. He was the proprietor of a house of prostitution at East Burlington, Illinois, who stomped to death one of his prostitutes, Jessie McCarty, on 6 November 1875 and then ordered her body dumped into the Mississippi River.[1]

The hanging at Oquawka, the county seat, was an effort by the law-abiding citizens of Henderson County to stop the crime and violence that had been growing in Illinois and Iowa after the Civil War. The prostitutes, gamblers, and swindlers, who serviced the armies during the War, continued into civilian life. This moral decay prompted state governments to pursue programs of better law enforcement and to improve penitentiaries and reform schools. Some governors of both Iowa and Illinois believed that all criminals should be punished and that punishment should not be set aside due to some small irregularities in the judicial process. River towns were thought to have more crimes of violence than inland communities. Towns along the upper Mississippi River had additional problems in enforcing laws, for the river could hide bodies, and criminals used floating gambling houses and/or bordellos called "gunboats" to evade the law officers' areas of jurisdiction.[2]

Bill Lee's residence, "opposite the City of Burlington, (Iowa) just below the railroad bridge. . . was originally a flat boat decked over and divided into apartments and known as 'the Gunboat.' " The boat had been left beached on the shore of the river and was soon rebuilt into a house. The original

flatboat was burned down in November, 1872. In the spring of 1873 "a large two story frame house was erected" in the same spot as the original gunboat. William Lee took over management of the house from his cousin, Harry Lee, in the spring of 1875 because Harry Lee feared Henderson County law officers and vigilantes.[3]

William Wesley Lee had not always been a pimp. He had been born in Jefferson County, Iowa, eight miles east of Fairfield, in 1847. His parents were born in Kentucky, resided in Indiana, and moved to the area of Jefferson County in 1837. Lee was two years old when his parents moved to Davis County, Iowa. The family lived there fifteen years and then returned to the area of Fairfield. Lee had joined the Methodist Protestant Church at the age of nine. His only education was a short stint at a country school. His father was reported to like alcohol and, when drunk, had a vile temper and liked to fight. Lee's mother was supposedly a good Christian woman who taught her children to read the Bible and to serve God by doing right. At eighteen, Lee was married to Annie Stallman. He lived with his wife two years and they had one son. Lee left his family because his wife was a shrew. He moved to Sac County, Iowa and worked with one of his brothers as a brick mason. Later, he married Maggie Wilson. Lee stayed with her three years at Grant City, Iowa. Then they moved back to Fairfield to be with her parents. Because he had trouble with his father-in-law, he started drinking and womanizing too much and also claimed his wife was not true to him. After leaving his second wife in 1874, Lee became a wanderer, traveling from Salt Lake City, Utah, to Galveston, Texas, to Missouri and to the Indian Territory. He returned from the Plains to St. Louis, where he was prevailed upon to take a letter to Harry Lee at East Burlington. Lee soon arrived at the Gunboat and cousin Harry suggested he, "engage in business with him and thus be revenged on my faithless wife." So Lee remained and took over the business in 1875.[4]

At his execution, the physical description of Bill Lee was that of a strong man. He was over five feet ten inches in height, 170 pounds in weight, with dark straight hair, mustache, and goatee. He had "regular features, slightly angular cheek bones, heavy under jaws, medium cast of forehead, and bluish gray eyes." One newspaper said his face showed "a strong predominance of animal traits and passions."[5]

Jessie McCarty's life was not as well recorded as that of her murderer. At the time of her death, she was supposedly thirty-two years of age. She had been born in Missouri, and at the age of twenty-two married a burglar named McCarty. She had supposedly worked as a servant for wealthy families in Burlington. Jessie was known to drink and was considered an old timer by her compatriots. Lee, in his dying confession, said McCarty "was a worthless girl and a morphine eater." Newspapers at the time called Jessie McCarty "a young girl," "a poor lost girl," and "a frail but defenseless female."[6]

Lee met Jessie McCarty on Thursday, November 4, 1875, when she

WILLIAM W. LEE

asked refuge at his Gunboat. He claimed that he did not want McCarty to stay at the Gunboat, but she begged so hard that he relented and let her stay. She evidently sent to Burlington for morphine as soon as she arrived, for Lee remembered that she acted as if she were drunk both Thursday evening and Friday morning. On Friday, McCarty asked Lee for money, but he refused, saying that he did not allow his girls "to eat morphine or even drink whiskey." She promised him that she would quit the drug. Lee "went to town" and returned in the afternoon to find that he had customers who wanted to dance. Jessie was not earning her keep by entertaining the fellows so Lee went searching for her. He found her in her room. She refused to entertain the guests and cussed at him. Lee then shoved and kicked her out of her room. She was so groggy that she fell down. He left her in her room for the night.[7]

The next morning, Saturday, November 6, 1875, Jessie came and asked Lee for more money to take care "of her head." He refused and told her to leave. Then "she talked back very insulting to" him. Lee went into town and came back that evening to find Jessie still at the house. She came into his room drunkenly and asked for more money to send with Dan Brazee to get her morphine in town. Lee refused and she began "to talk very rough to" him. Lee told her to leave and she cussed even more. Lee "put her out of" his room and went to supper.[8]

After supper, Lee gave Brazee money to give Jessie as soon as she left the Gunboat. Jessie came into Lee's room demanding money. Lee refused and she cussed him. He grabbed her and slapped her a few times. He took her to the kitchen and told Brazee to take her to town. At that moment, Jessie jerked loose from Lee "and fell on the floor cussing" him. Lee, "kicked her and told her to get up; she would not do it." Lee claimed he was mad at being cussed at and "only thought of whipping her when I commenced on her, but I was too mad and hit and abused her too hard." Lee remembered that "Being a man of strength I did not realize the force of my blows on the girl until it was too late. It was not in my thought of killing her. In my mad fit I did not realize what I was doing."[9]

The story told by Lee's compatriots at the Gunboat about the murder was more damning in evidence. Sarah Smith said that Lee repeatedly kicked and kicked Jessie in the bedrooms or in the upstairs hall that Friday night before the murder. The next morning Jessie had a square cut in her foot made by glass. Lee bought a new pair of boots in town on Saturday and was reported as saying when he came home that "By God, these will finish her." In either Lee's or Jessie's room on Saturday night about 7 o'clock, several members of the house heard stomping and Lee saying something like "you d–d b–h– do you know me now?" Lee then dragged Jessie downstairs to the kitchen and started jumping and stomping on her body and face again. Lee said to "bring the coffin." When Jessie was brought downstairs, "her clothes (were) clear up round her waist." After being in the kitchen, Jessie was taken to the summer kitchen. About a half hour

JESSIE McCARTY.

later, Brazee and Lee dragged Jessie out to a tree nearby. Lee then "gritted his teeth and kicked her on the side and back till he turned her over and then he kicked her in the face and jumped on her till. . . her neck crack(ed). He got a club and struck her two or three times." Lizzie Thompson and Jennie Smith went out to see her and thought she was very cold and dead. Lee threatened the members of the house and said that he would kill anyone who "cheeped" or "cheeked," and they should claim she left at 5 o'clock that evening. Lee ordered Dan Brazee, William Perkins, and Larry O'Neil to take McCarty's body in a skiff to the Iowa channel of the Mississippi River. After they had disposed of the body, either Perkins or Lee burned her clothes.[10]

The secret of the murder was kept until midnight of November 20, 1875, when Dan Brazee confessed to Alderman Hunt of Burlington. Hunt informed Burlington Chief of Police, Charles B. Johnson, who notified Henderson County Sheriff, George Bell of Oquawka, by telegraph. On Monday, November 22, 1875, Chief Johnson and two officers borrowed a locomotive and headed across the railroad bridge. Halfway across they arrested two men who were inhabitants of the Gunboat. Upon reaching Carthage Junction, Johnson and his men waited for Sheriff Bell. While they waited, two women from the Gunboat had crossed the railroad bridge from Burlington and were headed for the Gunboat. They were arrested and joined the two men previously taken. When Sheriff Bell and his two officers arrived from Oquawka by train about 4:30 p.m., the officers left the prisoners under guard and then went down to the Gunboat, surrounded it, and captured "Bill Lee, two other men and three women." The ten inhabitants of the Gunboat "were ironed and taken up to Oquawka."[11]

On Tuesday, the prisoners were interrogated by Chief Johnson at the Henderson County Jail, which was located two miles southeast of Oquawka on the country farm. On Wednesday afternoon, the prisoners were arraigned before Judge Richard W. Richey. Jefferson H. Jennings, Prosecutor, charged the defendants "with keeping a house of ill fame." Charles J. Dodge, Lee's attorney, waived examination for Lee. Bail was fixed at $500. Two women demanded examination. The rest of the prisoners waived examination and bail was set at $500 for each of them. Lee was then charged by Jennings for the murder of Jessie McCarty "at the house kept by him as a bawdy house in the County of Henderson and State of Illinois." Lee's counsel, Dodge, waived examination and let the matter go to the Circuit Court. All of the other defendants were charged as "accessories after the fact to murder." They all waived examination and allowed the case to go to the Circuit Court. Bail was set at $1000 each. Dodge mentioned the fear Lee had of the Henderson County Union Vigilance Committee trying to lynch him. Judge Richey replied "that no fear need be apprehended from them doing anything unlawful, as all their acts were merely in aid of the Courts." All the defendants were committed to the jail to await the action of the grand jury in March, 1876.[12]

THE "GUNBOAT"

That evening after the arrignment, "Lee's bawdy house at East Burlington" was burned to the ground and the flames lit up the railroad bridge. The *Burlington Evening Gazette* credited the Henderson County vigilantes with starting the fire. The *Oquawka Spectator* claimed that the committee "would (not) do any act in violation of law." In a letter published in the *Spectator* a supposedly knowledgeable person of the vigilance committee claimed "that the U.V.C. will do no lawless act, nor burn property wantonly, to please any one." No matter whether arson was or was not officially endorsed by the vigilantes, the Gunboat somehow burned to the ground.[13]

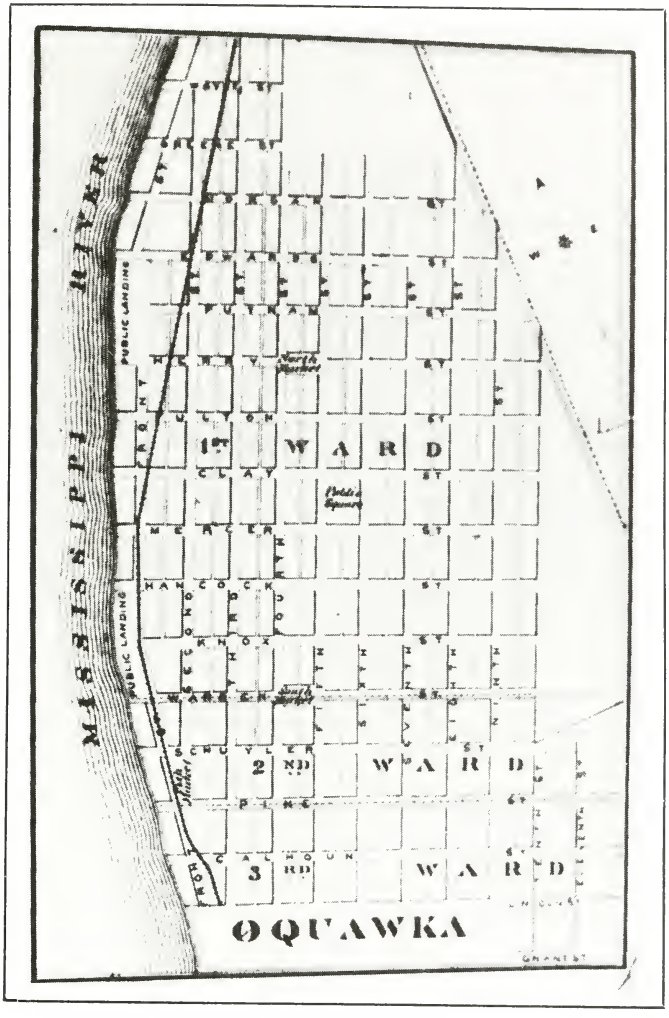
In one instance, the Union Vigilance Committee of Henderson County actually advertised in the *Oquawka Spectator* that a very important meeting was going to be held at Olena and members should attend. It seems that many residents of the county supported the actions of the committee, as long as they could be so open in their activities.[14]

Lee did not wait complacently in jail for the grand jury to convene. On January 21, 1876, Lee planned, while exercising in the hall of the jail, to attack the jailer with a "slung shot" (sic) made of a handkerchief and a piece of hard coal and then escape. Lee failed in his plan and was relieved of his weapon. That was unfortunate for him because Jessie McCarty's body was found washed up ashore on an island near Montrose, Iowa on Saturday, February 26, 1876. The following Monday Sheriff Bell took Dan Brazee and two of the girls to Montrose to identify the body. All agreed it was McCarty.[15]

At the March term of the County Circuit Court, the grand jury issued an indictment against William Lee for the murder of Jessie McCarty. He was accused of murdering McCarty on November 6, 1875, by jumping on and beating her. The several mortal bruises killed her. The other defendants were indicted as accessories for concealing the murder. Lee asked for a continuance and the Court agreed and a Special Criminal Term was ordered to commence April 24, 1876.[16]

The trial of William Lee opened on Monday afternoon, April 24, 1876, in the Courthouse at Oquawka. The reporter of the *Burlington Daily Hawk-Eye* described the intense interest in the trial as immense. He wrote, "From all directions the roads were alive this morning with eager men whose eyes and ears were all pointed toward the court house." He summed up the interest and prejudice by saying, "The case is the sole topic of conversation in the village, the general feeling being strongly against Lee."[17]

At the time of Lee's trial in 1876, Oquawka was a small village. In 1870 the population was 1,370 people. Ten years later, it was 891. Oquawka had been platted by Stephen S. Phelps and Alexis Phelps in 1836 to be a great commercial and river port, but when the railroads bypassed the town it started to decline. At its zenith, Oquawka was a shipping outlet for Henderson, Warren, and Knox Counties. By 1876, Oquawka had become the largest village and county seat of Henderson County. Situated at the corner of Fourth and Warren, the courthouse had been built in 1843. Lee's trial occurred on the second floor. Alexis Phelps had built the brick court-


MISSISSIPPI RIVER
PUBLIC LANDING
PUBLIC LANDING
1ST WARD
2ND WARD
3RD WARD
OQUAWKA

house in the Greek-Revival architectual style popular in that period. The courthouse was thirty-three years old when it witnessed Lee's trial.[18]

On Monday morning, April 24, 1876, a pale Bill Lee was brought into the courtroom before Judge Arthur A. Smith of Galesburg. The prosecution was represented by Jefferson H. Jennings and John J. Glenn and James H. Stewart of Monmouth. Judge Jonathan Simpson, defense counsel, asked for a postponement because of his illness. The court adjourned until five o'clock p.m. When the court reopened at that time, Simpson asked for a change of venue because Lee claimed that the Union Vigilance Committee of Henderson County had inflamed the people of the county against him. The prejudice was so strong he claimed that the Vigilance Committee had burned his property and publicly declared "that no one should carry on a like business at said place anymore." Lee believed that he could not get a fair trial in Warren County because Glenn and Stewart were both residents of Monmouth. Stewart claimed the application was invalid since it was introduced only that day when statute ordered ten days notice was needed. The motion was overruled and the court adjourned to Tuesday morning.[19]

On Tuesday morning, April 25, Simpson, the defense counsel, made a motion to quash the indictment because of faulty wording. Stewart for the prosecution replied that the indictment was in accordance with common law. The motion was overruled. After this, jury selection began. At noon, only four jurors out of sixty called had been chosen. Officers were ordered out to bring in ninety-six more candidates for jury selection, which continued that afternoon. During the day, the *Burlington Daily Hawk-Eye* reporter had been out observing the scene on the streets of Oquawka. He reported one conversation with an old farmer that seemed to express the feelings of the people of the county. The old man said,

> The folks hereabouts have got pretty tired of paying taxes for you Burlington folks. We haven't got no use for such places as that below the bridge, nor for the crimes they put onto us. We don't want to keep our jail full of criminals and feed 'em, and pay court expenses, when those criminals couldn't carry on so in this county, if Burlington wasn't bigger than Oquawka. I guess that there won't be no more of them houses kept around here. We've got tired of 'em.[20]

Further jury selection continued on Wednesday and by Thursday the selection was complete with five being chosen on Wednesday and the rest on Thursday. By 9 o'clock a.m. on April 27, Thursday, the following twelve jurors had been selected out of 161 or 168 men interviewed; Samuel Mitchell, Luther Watson, T.L. Bowen, D.W. Lovitt, George Christie, J.A. Milligan, Mathew Huston, Washington Deatherage, J.H. Allaman, Samuel Galbreath, Levi Grossman, and George H. Vogt. All of the jurors were farmers by occupation except Deatherage, who was a sawyer. The jurors were residents of seven different townships of the county. At 9:30 a.m., the trial began.[21]

Jennings, the prosecuting attorney, opened the case with a short statement of the facts. Simpson, the defense attorney, then followed him. Lee's defense was that the girl quarreled with him and then left and was never seen or heard from again. The parade of witnesses spoke for the prosecution. Lizzie Thompson, Margaret Ann Hawkins or Frank Perkins, Jennie Smith, Sarah Smith, Jed Courville, William Perkins, Dan Brazee and Howard Wright, collectively, told the story that Lee quarreled with McCarty, beat her to death, and finally tried to get rid of her body.[22]

On Friday, April 28, a large crowd squeezed into the courthouse to hear the trial. Howard Wright was the last prosecution witness and was followed by the defense witnesses. The first one was William Lee. Lee claimed that they quarreled and that he sent her away that Friday evening. He swore he had not killed her. Lewis Lee came to the stand and claimed that his brother was of good character but that he had not seen him in the last eighteen months. Dr. John H. Lee then took the stand and claimed that his brother had a reputation as a brick maker and layer. He had not seen him in two years. Dr. Lee revealed that he had been arrested in Burlington a few nights before for drunkenness. The defense testimony was followed by the rebuttal testimony of Charles B. Johnson, the Burlington Chief of Police, who had arrested Lee. He claimed that Lee was not a law-abiding man. Testimony closed at 10:00 Friday morning, and final arguments were started.[23]

Jefferson H. Jennings, the prosecuting attorney, commenced the arguments. He noted that the testimony of the witnesses was different enough to show they had not concocted the story, for if they had it would have been all the same. He said Lee had not proven the girl was still living. Glenn followed with an impassioned speech on how the fear of Lee had kept the other men of the Gunboat from speaking out before they did. He said that Lee's crime demanded that "he should be hung." Simpson gave the argument for the defense. He said his client was "without friends or money" and that undue influence had been brought to bear on the case to find the defendant guilty by the hiring of two prominent attorneys who only worked for large fees to help the prosecution. Simpson also mentioned that public opinion had been inflamed by undue propagandizing by the press. He said the testimony of the witnesses was suspect due to the fact that they were trying to avoid complicity in the crime. He asked the jury to be careful of conviction on doubtful evidence. Stewart closed the arguments with a summation for the prosecution. He claimed the testimony of the witnesses was consistent. The witnesses were telling the truth because if Lee was found guilty, they would then be tried as they had been indicted, as conspirators. If he was not guilty, then they were not guilty. Stewart gave the jury a lecture on "the justice of capital punishment as a social safeguard."[24]

At about 3:00 p.m. on Friday, Judge Smith gave instructions to the jury. The jury was told that if a doubt resting on a substantial reason existed in their minds, they should find Lee not guilty. They were to regard the testi-

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mony of the residents of the Gunboat with great caution. After deliberating for two hours in McKinney's Hall, the jury returned the following verdict in front of a dense packed courtroom: "We the Jury find the prisoner guilty of Murder in manner and form as charged in the indictment. And we further find that he shall suffer the punishment of Death."[25]

Lee took the verdict with great calm, and his attorney gave notice that he would make a motion for a new trial and court adjourned until morning, Saturday, April 29. That morning before sentencing, Judge Smith asked Lee if he wanted to say anything. Lee replied, "I don't think I have anything to say." Smith said to Lee that he believed the evidence sustained the guilty verdict and that he had never "met with a case of murder so diabolical and fiendish as this." Smith hoped the punishment would serve as a deterrent to other young men. Smith sentenced Lee to be kept in close confinement in the county jail "until the 16th day of June next, and then on said day, between the rising and setting of the sun, within the walls of said jail, or in an enclosure adjoining, he be hanged by the neck until he is dead." Smith then told Lee "may God, who can forgive your crime, which men cannot forgive, have mercy on your soul." Lee accepted this with the most serene face in the crowd.[26]

The trial of the other defendants of the Gunboat was postponed until August and their bail was reduced from one or two thousand dollars to one hundred dollars each and they were released to appear in August. Larry O'Neal demanded a trial by jury which was continued over to the August term of the Circuit Court. In the August trial, O'Neal was found not guilty.[27]

After being taken back to the jail from the courthouse, Lee immediately started planning to escape. On the evening of May 16, Lee was found by the jail guards digging through the floor of his cell, but he had been slowed by the stone in the foundation wall. He had been digging the tunnel with only a piece of wire and a piece of stove hearth. Following this, Lee awaited his death by writing his confession and hoping for a last minute stay of execution.[28]

On Thursday, June 8, Rev. William S. Taylor of Terre Haute came to see Lee and, becoming sympathetic, started a petition for a stay of execution. Taylor's petition was soon blocked by one started by the Union Vigilance Committee to allow the execution. They evidently wanted Lee to hang because since his conviction one member of the committee had always stood guard in addition to the Sheriff's man at the jail. On Tuesday, June 13, Lee was informed that the Governor would not give him a stay of execution. Lee then sought solace in God, and was ministered to by three local Reverends. Three or four hundred armed vigilantes began to gather at Oquawka and the jail on the day before the execution to make sure Lee did not escape the noose.[29]

On Friday, June 16, 1876, the day dawned, dark, dreary, and rainy, a perfect backdrop for Lee's execution. As early as six o'clock that morning, spectators were beginning to gather at the jail, which was two miles south-

east of Oquawka. The execution was segregated from the main body of the viewers by a high board fence nine to twelve feet high, which enclosed an area about forty feet by sixty feet. According to the newspaper, "The scaffold was built close against the walls of the jail and immediately in front of the south door." The platform was six feet high. "Two upright pieces of timber (twenty feet high) with cross beam at the top completed the framework." Two pulleys were attached to the cross beam to connect the three quarter inch rope with the drop weight of 360 pounds of iron at the edge of the platform. The iron when dropped would raise Lee five feet ten inches from the platform.[30]

After falling asleep at midnight, Lee was awakened at seven o'clock. He had breakfast and then dressed in a black suit. He met with his brothers and Reverends Taylor and Pershin that morning. He had dinner at noon and continued to wait for the execution.[31]

The execution attracted a large crowd from all over western Illinois. Estimates of the crowd present ranged from 3,500 to 5,000 persons. Both men and women were present. To get a better view over the enclosure, many climbed trees and adjoining "fences, sheds, and barns." Supposedly, every one standing on the ground a hundred feet from the enclosure could see just as well as the spectators who were allowed inside the enclosure. The crowd came from Dallas City and Keithsburg by the steamboats *John Taylor* and *Winneconne*, respectively. People arrived by the train, wagons, and carriages. Reporters for the following newspapers were present: *Chicago Tribune, Saint Louis Globe-Democrat, Inter-Ocean, Chicago Journal, Galesburg Plaindealer, Galesburg Republican, Galesburg Register, Burlington Hawk-Eye, Keithsburg News, Monmouth Review, Galva Journal, Oquawka Spectator,* and *Roseville Gazette.* One reporter mentioned that "the streets of this usualiy (sic) quiet village (Oquawka) wore a holiday appearance" on such a somber day.[32]

After 2:00 p.m., William Lee was brought from the jail and appeared on the platform of the scaffold. He seemed unsteady as he approached the rope. Persons present included several ministers of the gospel, several doctors, Lee's brothers, and the jury to officially witness the execution. Sheriff Bell read the death warrant and Lee was then allowed to say his final words. He claimed whiskey and prostitutes were what caused him to be hung. Lee warned young men to avoid the life that he had led. He hoped God would forgive his crime and he mentioned that in his "history of my life" he had told the truth about Jessie McCarty. After the speech, Sheriff Bell bound Lee with leather straps and drew a black cap over his face. As this was being done, Lee "cried out 'Farewell, farewell. Meet me in Heaven!" Rev. William S. Taylor of Terre Haute gave a short prayer. On "Amen" and at 2:36 p.m., Bell sprung the trap and Lee leaped upward. A final convulsion of the body was seen after a few minutes. In about fourteen minutes, Lee was declared dead by the attending physicians, Dr. B.F. Hamilton of Terre Haute, Dr. Isaac B. Cowden of Olena, and Dr. Willis

Cannon of Carman. Lee's body was allowed to hang until 3:16 p.m., when it was enclosed in a coffin and delivered to his brothers, John and Lewis Lee for burial.[33]

Lee was buried in Jefferson County, Iowa beside his mother. Historian Philip D. Jordan considered Lee's death the high point of the gunboat trade on the Mississippi River. After 1876, these boats made fewer appearances on the river due to the final demise of the use of steamboats as a major form of transportation in the United States. The Lee case is a glaring example that the late nineteenth-century Illinois-Iowa region was not totally free of the violence of the frontier era. The wealth of material on the Lee case in local newspapers substantiates Thomas Clark's claim that a "fabulous record of violence in America" has been preserved in the rural press.[34]

One major question remains about the Lee case: how much influence did the vigilantes have on the jurors who convicted Lee? Lee himself confessed that he was guilty. The speediness of the court was amazing. Jury selection took longer than the trial. The vigilantes of Henderson County seem to have been held in high esteem by the people and the court system. If the members of the jury were not vigilantes, then they probably reflected the same desire of the vigilantes that an example should be made of Lee to deter crime in the county. The publicity on the case and the existence of the Union Vigilance Committee definitely would have made it very difficult for Lee, if he had been innocent, to receive a not guilty verdict in Henderson County.

NOTES

[1]"Crime: The Oquawkee Execution," *Chicago Daily Tribune*, 17 June 1876, p. 5.

[2]Richard J. Jensen, *Illinois: A Bicentennial History* (New York: W.W. Norton & Company, Inc., 1978), p. 73; John H. Keiser, *Building for the Centuries: Illinois, 1865 to 1898* (Urbana, Illinois: University of Illinois Press, 1977), pp. 61, 11; Benjamin F. Shambaugh, comp. and ed., *The Messages and Proclamations of the Governors of Iowa,* 7 vols. (Iowa City, Iowa: State Historical Society of Iowa, 1903-5), 4:294-5, 341-6; and Philip Dillon Jordan, *Catfish Bend: River Town and County Seat Sesquicentennial Edition* (Burlington, Iowa: Mississippi Valley Publishers Craftsmen Press, Inc., 1983), pp. 259, 264-6.

[3]John H. Lee and Lewis Lee, comps., *A Full and Authentic Account of the Trial of William W. Lee, for the Murder of Jessie McCarty, also His Dying Confession, Written by Himself. . .* (Burlington, Iowa: Hawk-Eye Steam Printing and Binding Co., 1876), p. 3. (East Burlington [present day Gulfport], Illinois in 1876 contained nothing but a large stockyards and the junction of the Carthage division of the Chicago, Burlington and Quincy Railroad with the main line. This Carthage Junction was at the east end of the railroad bridge over the Mississippi River, East Burlington had been platted in 1856 but when the railroad bridge was erected over the river in 1868, most businesses transfered to Burlington, Iowa. See *History of Henderson*

County. . . [Chicago: H.H. Hill and Company, Publishers (1882); reprint ed., Aledo, Illinois: The Times Record Co., (1975, 1981)], p. 34; and Philip Dillon Jordan, *Catfish Bend: River Town and County Seat Sesquicentennial Edition* [Burlington, Iowa: Mississippi Valley Publishers Craftsman Press, Inc., 1983], pp. 101-2).

[4]Ibid., pp. 21-25, 28-30.

[5]*Chicago Daily Tribune*, 17 June 1876, p. 5; "Bill Lee: His Execution at Oquawka Last Friday for the Murder of Jessie McCarty. . .," *Monmouth Weekly Review*, 23 June 1876, p. 1; and "Bill Lee: Laundered Off into Eternity. . .," *Burlington Daily Hawk-Eye*, 17 June 1876, p. 5.

[6]Lee, pp. 3, 46; *Chicago Daily Tribune*, 17 June 1876, p. 5; *Burlington Daily Hawk-Eye*, 17 June 1876, p. 5; and *Monmouth Weekly Review*, 23 June 1876, p. 1.

[7]Lee, pp. 46-47.

[8]Ibid., pp. 47-48.

[9]Ibid., pp. 48-49.

[10]Lee, pp. 4-13; "Conclusion of the Trial of Bill Lee of East Burlington, for the Murder of Jessie McCarty. . .," *Oquawka Spectator*, 1 May 1876, p. 1; "Trial of Bill Lee: Testimony for the Prosecution. . .," *Burlington Daily Hawk-Eye*, 28 April 1876, p. 2; "Hemp: Bill Lee Convicted of Murder. . . ," *Burlington Daily Hawk-Eye*, 29 April 1876, p. 2; and *Chicago Daily Tribune,* 17 June 1876, p. 5.

[11]"Startling Sensation: Rumors of a Terrible Deed Across the River. . . ," *Burlington Evening Gazette*, 22 November 1875, p. 8; "Lee in Limbo: The Authorities Pull Ten Persons Out of the Gunboat. . .," *Burlington Evening Gazette*, 23 November 1875, p. 8 and "A Horrible Murder!: At East Burlington. . .," *Oquawka Spectator*, 25 November 1875, p. 1.

[12]"The Murder: Lee and His Accomplices Bound Over to the Next Term of Court. . .," *Burlington Evening Gazette,* 26 November 1875, p. 8; and *Oquawka Spectator,* 25 November 1875, p. 1. (The county jail was in the basement of the largest building on the Henderson County Poor Farm two miles from Oquawka on Henderson Creek. Richard W. Richey had been an early settler of Henderson County and a judge for several years. His prejudice in favor of the vigilantes can be partially explained because his son Thomas G. Richey was head of the vigilance committee. Jefferson H. Jennings had been Henderson County Prosecutor since 1872. Charles J. Dodge was an attorney from Burlington, Iowa. See *History of Henderson County. . .*, pp. 55, 136-7, 327-8, 226; and Louis Pelzer, *Augustus Caesar Dodge* [Iowa City, Iowa: State Historical Society of Iowa, 1908], p. 257.)

[13]*Burlington Evening Gazette*, 26 November 1875, p. 8; "A Conflagration!" *Oquawka Spectator*, 25 November 1875, p. 1; and *Oquawka Spectator*, 17 February 1876, p. 1.

[14]"The County Jail and Prisoners: The U.V. Committee," *Oquawka Spectator*, 2 February 1876, p. 1; Lee, p. 40; and "A Corpse Afloat!: The Body of Jessie McCarty, Bill Lee's Victim, Found Afloat in the River," *Oquawka Spectator*, 1 March 1876, p. 1.

[16]"Trial of Bill Lee, of East Burlington, for the Murder of Jessie McCarty," *Oquawka Spectator*, 27 April 1876, p. 1; Lee, pp. 3-5; and Indictment for Murder, Circuit Court, Henderson County, Illinois, in the Matter of The People of the State of Illinois vs. William Lee et al., Box 270, Henderson County, Records and Files of the Clerk of the Circuit Court, Oquawka, Illinios. (Here after all manuscripts cited are from this file.)

[17]"The Gunboat Beast: On Trial for Murder at Oquawka," *Burlington Daily Hawk-Eye,* 25

April 1876, p. 1.

[18]U.S. Department of Interior, Census, *Ninth Census of the United States, 1870: The Statistics of the Population of the United States*, p. 112; U.S. Department of Interior, Census, *Statistics of the Population of the United States at the Tenth Census, 1880*, p. 135; *History of Henderson County*. . .(Chicago: H.H. Hill and Company, Publishers, [1882]; reprint ed., Aledo, Illinois: The Times Record Co., [1975, 1981]), pp. 74, 77, 26; James W. Gordon, "Reminiscences of Yellow Banks," *Transactions of the Illinois State Historical Society for the Year 1915* (1916): 58; Matthew H. Jamison, *Recollections of Pioneer and Army Life* (Kansas City: Hudson Press, 1911), p. 61; and Virginia Mae Hughes "The Mississippi River Trade and Its Influence Upon the River Town of Oquawka" (Honors paper, Knox College, 1941), pp. 3, 8, 9 18. (No comprehensive history exists for Oquawka but fragments of its story are told in the above sources and Carl Anton Wagner, "Oquawka: A Typical Upper Mississippi River Port 1883-1890" [M.A. thesis, University of Illinois, 1942].)

[19]*Burlington Daily Hawk-Eye*, 25 April 1876, p. 1; Lee, p. 5; *Oquawka Spectator*, 27 April 1876, p. 1; "Trial of Bill Lee: The Scene at Oquawka Yesterday. . .," *Burlington Daily Hawk-Eye*, 26 April 1876, p. 1; and Lee Petition, Records and Files of the Clerk of the Circuit Court. (For biographies of Simpson, Smith, Glenn, and Stewart, see *History of Henderson County*. . ., pp. 107-8, 29; Albert J. Perry, *History of Knox County, Illinois: Its Cities, Towns and People*, 2 vols. [Chicago: S.J. Clarke Publishing Company, 1912], 1:59; and *Portrait and Biographical Album of Warren County, Illinois*. . .[Chicago: Chapman Brothers, (1886); reprint ed., (Roseville, Illinois: Carlberg Publishing Co., 1979)], pp. 636-7, 399-400.)

[20]*Burlington Daily Hawk-Eye,* 26 April 1876, p. 1; and *Oquawka Spectator*, 27 April 1876, p. 1.

[21]"Trial of Bill Lee: The Work of Empanneling a Jury. . .," *Burlington Daily Hawk-Eye*, 27 April 1876, p. 1; *Burlington Daily Hawk-Eye*, 28 April 1876, p. 2; *Oquawka Spectator*, 27 April 1876, p. 1; Lee, p. 5; and Jury Verdict, Records and Files of the Clerk of the Circuit Court.

[22]*Burlington Daily Hawk-Eye*, 28 April 1876, p. 2; 29 April 1876, p. 2; Lee, pp 6-13; and *Oquawka Spectator*, 1 May 1876, p. 1.

[23]*Burlington Daily Hawk-Eye,* 29 April 1876, p. 2; Lee, pp. 13-14; and *Oquawka Spectator*, 1 May 1876, p. 1.

[24]*Burlington Daily Hawk-Eye*, 29 April 1876, p. 2; Lee, pp. 19-20; and *Oquawka Spectator*, 1 May 1876, p. 1.

[25]Jury Instructions and Jury Verdict, Records and Files of the Clerk of the Circuit Court; Lee, pp. 14-17; *Oquawka Spectator*, 1 May 1876, p. 1; and "Trial of Bill Lee, of East Burlington for the Murder of Jessie McCarty Concluded," *Oquawka Spectator-Extra*, 28 April 1876.

[26]"Bill Lee to Hang: The Day of Doom Set by the Court. . .," *Burlington Daily Hawk-Eye*, 30 April 1876, p. 1; Lee, pp. 17-19; *Oquawka Spectator*, 1 May 1876, p. 1; and Motion for New Trial and Directions to Sheriff, Records and Files of the Clerk of the Circuit Court.

[27]*Burlington Daily Hawk-Eye*, 30 April 1876, p. 1; and O'Neal Jury Verdict, Records and Files of the Clerk of the Circuit Court.

[28]"Bill Lee is Anxious to Escape the Gallows, and Makes Another Unsuccessful Attempt to Get Out of Jail!", *Oquawka Spectator*, 18 May 1876, p. 1; Lee, pp. 40-41; "The Drop Falls!: Lee Lives No Longer. . . ,"*Oquawka Spectator*, 16 June 1876, p. 1.

[29]*Oquawka Spectator*, 16 June 1876, p. 1; Lee, pp. 44-45, 50; and *Monmouth Weekly*

Review, 23 June 1876, p. 1.

[30]Lee, p. 55; *Burlington Daily Hawk-Eye*, 17 June 1876, p. 5; *Monmouth Weekly Review*, 23 June 1876, p. 1; James G. Randall, ed., *The Diary of Orville Hickman Browning: Volume II, 1865-1881* (Springfield, Illinois: Illinois State Historical Library, 1933), p. 452; *Chicago Daily Tribune,* 17 June 1876, p. 5.

[31]*Burlington Daily Hawk-Eye*, 17 June 1876, p. 5; *Monmouth Weeky Review*, 23 June 1876, p. 1; and Lee, p. 53.

[32]Lee, pp. 55, 52; *Chicago Daily Tribune*, 17 June 1876, p. 5; *Monmouth Weekly Review,* 23 June 1876, p. 1; and *Oquawka Spectator*, 16 June 1876.

[33]Lee, pp. 53-54; *Burlington Daily Hawk-Eye*, 17 June 1876, p. 5; *Oquawka Spectator*, 16 June 1876, p, 1; *Monmouth Weekly Review*, 23 June 1876, p. 1; and Sheriff's Report, Records and Files of the Clerk of the Circuit Court. (A complete text of Lee's last words with minor differences in punctuation is in the *Oquawka Spectator*, 16 June 1876, p. 1, and in the *Monmouth Weekly Review*, 23 June 1876, p. 1.)

[34]Jordan, p. 266; and Thomas P. Clark, "The County Newspaper as a Source of Social History," *Indiana Magazine of History* 48 (September 1952), 225.

DARK FACES ON THE ANTEBELLUM WEST CENTRAL ILLINOIS LANDSCAPE

Roger D. Bridges

The 1830 federal census listed only 51 blacks living in the fourteen county area (then only eight) west of the Illinois River.[1] Throughout the entire antebellum period, the number of blacks in the area never quite reached four-tenths of one percent of the total population. Beginning with the 51 blacks listed in 1830, however, the population climbed to 680 in 1860 out of a total population of 296,348. Within the fourteen county area, most blacks were found in Adams, Knox, Pike, and Peoria counties. Conversely, few or none settled in Calhoun, Henderson, McDonough, Marshall, or Stark counties. Only Adams County reported any French slaves, although there were a few hundred indentured servants (thinly disguised slavery) elsewhere within the area.[2]

The region was settled primarily in the period after statehood, and the views of its residents were not dissimilar from those elsewhere in Central Illinois, settled at roughly the same time. Antebellum Illinois shared with its sister states in the Old Northwest, a decidedly anti-black bias. Although the Northwest Ordinance of 1787 had prohibited slavery, it had existed since early in the 17th Century in the area that was to become Illinois. The French colonists had held slaves, and the early English and American settlers in the late Eighteenth Century had brought slaves with them when they entered the area. Even after the Northwest Ordinance Governor Arthur St. Clair gave it as his opinion that the Ordinance had no effect on persons held to bondage prior to its passage. Subsequently, the territories and states that emerged in the area not only honored St. Clair's opinion, but also developed a thinly disguised form of slavery in their indenture laws. These laws were supplemented in Illinois by a series of restrictions on the rights of blacks that came to be known as "Black Laws." By 1845, all blacks in Illinois had to be registered and any one moving into the state had to post a bond with the county circuit clerk insuring that he or she would not become a financial burden to the state and its citizens. Blacks were excluded, by law, from the polls, militia, and public office. They could not

testify in court against a white. In sum, they were excluded from almost all the rights and privileges of citizenship, and had obstacles of all kinds placed in the way of earning even their livelihood. The obvious intent of this restrictive legislation was to inhibit black settlement within the state.[3]

By 1847-1848 many Illinoisans were ready to take the next step and explicitly prohibit all future black immigration. When the Illinois Constitutional Convention of those years met to re-write the state's archaic document of 1818 the delegates submitted a separate article enjoining the General Assembly to prohibit black immigration along with the basic document. In the March 6, 1848 vote, Illinoisans not only adopted the new Constitution but 70.3% of those voting favored the separate article. Illinois residents wanted no new black residents.[4]

West central Illinois residents voted even more overwhelmingly for the separate article, 76.2% of the votes there favoring it.[5] When John A. Logan introduced a bill in 1853 "to Prevent the Immigration of Free Negroes into This State," most west central legislators supported it. Twelve of the sixteen representatives and three of the four Senators from the region who voted, favored the bill which was signed by Governor Joel Matteson. The law prohibited free blacks from entering the state for the purpose of settling. Anyone who did so, and remained more than ten days was subject to arrest and a fine. If unable to pay the fine, the offender was to be auctioned by the sheriff to anyone who could pay the fine and work the black the fewest number of days. If, upon completion of service, the offender failed to leave the state, he or she was subject to the same fate again.[6]

West central Illinois newspapers generally supported the measure. Leading the way was the editor of the McDonough *Independent*, who wrote: "We favor. . . (the black law) because we do not want a free colored population among us. Illinois is a free State—let her remain so. . . . Let those who will have the *benefits* of involuntary servitude, also make provision for its evils; let *them* see that the free colored man can have a home among *themselves*, where he was born and reared, and if he has contracted perverse and servile habits in consequence of the 'peculiar institution,' and will thus wield an undesirable and unhallowed influence over those among whom he may dwell, let that influence and the evils engendered by slavery, be borne entirely by its instruments, and those who have enjoyed its enervating benefits." A few weeks later, again in support of the "Black Law," he wrote; "The majority of the citizens in this county are from slave states, having been reared in its midst, and becoming disgusted with beholding the white and black on a level, have removed to Illinois where they supposed they could reside in place without coming in contact with the labor and effluvia of the wooly head, whose presence is seen more or less in every town or village of this state, (excepting Macomb)."[7] The editor of the *Pittsfield Union*, put the exclusionists views most succinctly, perhaps, when he wrote: "They who oppose the Law, then, are in favor of letting Free Negroes come in swarms and settle

among us—perhaps ou(s)t white men to make room for them. No matter! Who cares for the poor, but honest, hard-working men? What if he have removed from a slave state purposely to avoid the evils of slavery? The Free Negro must be taken care of! They who oppose the Law virtually say to the slave states: 'Send on your refuse and degraded population. It matters not if they be indolent, thieving and vicious! It matters not that they increase the number of paupers and increase your taxes! Shove them over! Being a generous people most cordially we welcome them to our shores!' " Following this bit of sarcasm, the editor then listed some names of the over one thousand majority from Pike County who supported the black exclusion clause.[8]

Hard pressed Illinois blacks responded in dismay to the passage of the most recent "Black Law." Joseph H. Barquett, a young Chicagoan soon to move to Galesburg, responded with a letter of ridicule addressed to the editor of the *Western Citizen*, Chicago's antislavery newspaper. He began by reducing the Law to the level of burlesque: "The recent law of inhibition against the negro, passed by our legislature (if we can say ours, for we did not help to elect them) bears hard, very hard against Sambo. . . .Well, sir, I wish to annex myself to a wife, but the commodity in colors is scarce in our market! What shall we do? If we go from home to import one, the dear creatures will be sold to some heartless Logan. What then shall we do? The laws of Illinois do not recognize the marriage tie between a white and negro, that's all." In a more serious vein he predicted that "a war of extermination" could result from the law. He also reminded his white readers that Illinois, and other states guilty of repression were damaging the nation's reputation. "Europe smiles," he wrote, "and taunts American liberty. Her despots smile when Illinois plucks the eagle, emblem of our country, her lost plumage quill dipped in blood to sign slavery for freemen."[9] Chicago leaders of the black community met and after denouncing the nefarious law, and its predecessors, called a State Convention to meet in October in order to unite upon a common course of action. When the convention convened three Peoria delegates — Augusts O. Dobbins, William L. Barnes, and Thomas Y. Mason — represented western Illinois.[10]

This convention was the first statewide secular meeting of Illinois blacks. In addition to discussing the "Black Laws," the delegates discussed a number of other issues that affected their lives. The convention adopted a number of resolutions calling upon the Illinois General Assembly to repeal all laws limiting the rights of its black citizens. The delegates also denounced all emigration schemes and enjoined the state's black ministers "to preach against slavery" frequently. Peoria's Thomas Y. Mason was a member of the four man committee that prepared an "Address of the Colored State Convention to the People of the State of Illinois." The "Address" incorporated the resolutions plus advocating suffrage.[11]

The anti-black bias of western Illinoisans also surfaced when Macomb sought incorporation as a city in 1855. In that year, Senator James Campbell

of Macomb introduced an incorporation bill that included a prohibition against blacks settling in the city. He declared it was his moral duty to do whatever was possible to keep the races separate. He further was confident that his constituents would support him. Despite his spirited defense of the section, however, it was deleted before the bill became law.[12] Macomb residents were thus denied a legal basis for keeping native Illinois blacks, or those in Illinois prior to 1853, from settling in their city. The city did not, however, have any blacks as late as the 1860 census, although Senator James Campbell had apparently chased at least one out of town declaring that Macomb "was a white man's town."[13]

For many Illinoisans, one solution to the controversy that surrounded the issue of free blacks in Illinois was support of colonization. An Illinois Colonization Society was organized in Vandalia in December, 1830, for the express purpose of ridding the state of the small number of blacks then present in the state.[14] By the late 1830's and the 1840's a number of local colonization societies were organized at Peoria (1839), Quincy (1845), and Pittsfield (1847). The motives of the organizers were mixed, some supporting because they wanted no blacks in their midst; others supporting the movement out of despair, assuming that blacks could never be treated as equals. In 1855 Governor Joel Matteson encouraged the General Assembly not only to incorporate the state society, but also to lend financial support. Democratic Representative John P. Richmond of Schuyler county agreed with the Governor and introduced a resolution requesting the Rev. James Mitchell—a black American Colonization Society agent for Indiana, Illinois, and Missouri—to submit a report. His report was to include the most desirable location in Liberia for Illinois blacks, the cost of acquiring the land, why encourage emigration, how many Illinois blacks wanted to go, and how much it would cost the state. The editor of the *Quincy Herald* looked forward eagerly to a favorable report from Mitchell because "the people of Illinois would like exceedingly to get rid of said niggers." Within a surprisingly brief time—apparently one day—Mitchell submitted a report of 29 printed pages![15]

Few of Mitchell's Illinois compatriots agreed with his views on emigration. From the beginning of the American Colonization Society until 1855, only fifty-one had left Illinois for Liberia under its auspices, although others had contemplated it. In 1834 Joseph Murphy of Warren County freed his slave Richard Murphy for the purpose of allowing him to emigrate to Liberia, although the latter changed his mind and stayed. In 1847 the Wood River Colored Baptist Association resolved to send "a delegation to Liberia to examine into the claims of that country as an asylum and home for the colored people of this country." The Rev. Samuel S. Ball of Jacksonville and Springfield was designated to raise funds to finance the trip; the citizens of Quincy were among the major contributors. Ball himself made the trip to Liberia. His later report, while anything but sanguine, was a bit ambivalent, although it appears to be, on balance, anti-emigration. Most Illinois black

JAMES CAMPBELL

leaders, however, had been, and remained, strongly anti-emigration. John Jones of Chicago publicly denounced emigration in three letters to Chicago newspapers. The state convention of blacks in 1853 denounced emigration.[16]

It is not surprising, therefore, that western Illinois blacks rejected the colonization idea. Owen Lovejoy, representative from nearby Bureau County, "presented a remonstrance from the colored people of the State against their colonization in Africa, until they are all able to read and write, and unless separate colonies be assigned to those of different shades of color. The reason for the latter objection is, "the newspaper correspondent editorialized, 'that blacks and mulattoes can-not live harmoniously.' "[17] Joseph H. Barquett, the young North Carolina born black mason and blacksmith who had moved to Galesburg from Chicago, undoubtedly expressed the views of many of his western Illinois peers, when he asserted: "But we will not go—we will linger here in our birth place. . . we shall linger where our mother's bloody sweat has consecrated the soil, and our sable fathers first broke the sod with their sinewy arms." Even though republican America had oppressed them, Barquett insisted forced emigration was even more repressive.[18]

But if a majority of white western Illinoisans wished blacks kept out, or removed, there were others who worked actively to improve the lot of those living amongst them, or those who wished to escape slavery's chains in the bordering states. Several Quincy residents actively encouraged Missouri slaves to escape and assisted them in their flight. For this "crime" of "man-stealing" Quincyians had been imprisoned in Missouri.[19] Missionaries supported by the American Home Missionary Society were active in assisting fugitive slaves to escape. Indeed, the highest recommendation one Quincy missionary could give one of his younger friends who had applied to be sent to the Mendi Mission was that "His aid, as conductor upon the underground R. Road, has been willingly afforded to fugitives."[20] Contrary to what some scholars have recently alleged, there is ample evidence in newspapers and private correspondence that the underground railroad was very active in western Illinois. That some were captured and did not reveal the names of those assisting them in their movements is no bar to the reality of its existence.[21]

Despite the evidence of a sizable number of west central Illinoisans sympathetic to the plight of the blacks in their midst, and even more so for those in bondage elsewhere, the majority of white residents remained hostile to black settlers. Western Illinois sheriffs were ready and willing to assist in enforcing the 1850 Fugitive Slave Law. Moreover, in many communities blacks were routinely excluded from schools, churches, and social organizations. Warsaw Masonic Lodge No. 21 issued a broadside condemning a Chicago lodge for having admitted "an individual, who by the universal usages of society in this country, is regarded as a Negro." Such actions, they insisted, "will have a tendency to destroy that order and harmony which constitutes the strength and beauty of the Institution of

Masonry."[22]

Throughout western Illinois the white leaders gave little thought or attention to the education of the black children. In 1844 Quincy parents petitioned the city council for a school. The city council did appropriate $45 for a separate school but did not implement it. Another effort was made ten years later and this time the council appropriated $25 a quarter and also $150 for the construction of a building. Like the earlier gesture, however, nothing was done. It was not until 1861 that the city established Lincoln school, an elementary ungraded school established near, or on the site of one that appears to have been conducted by the A M.E. Church.[23] It is not clear what provisions were made for educating blacks in Galesburg or Peoria during the antebellum period. There is no evidence of separate schools in either of these communities, nor have I found any for other communities in western Illinois. We do know that one or more blacks attended the preparatory school at Knox, including Hiram R. Revels who was later a Senator from Mississippi.[24]

That Galesburg was not free of the overt racism that was more rampant in Quincy and Macomb, however, is also clear from the efforts to establish a uniform graded system in the late 1850s. The attempt by Galesburg residents in 1858-59 to secure a charter from the General Assembly for a free uniform graded school system illustrated once again the pervasive antipathy toward blacks in western Illinois. The proposed charter not only would establish free schools open "to all white children between the ages of 5 and 21; but the board were empowered to establish a school for colored children if they deemed it expedient. In case no school was established for colored children, the property of colored persons was to be exempt from taxation for school purposes." (Under state school law of 1857, there were already provisions for refunding taxes to blacks but no provision for opening public schools or establishing separate schools for black children.) At a meeting held to discuss the proposed charter then pending in the General Assembly, the "Rev. S.A. Kingsbury moved (unsuccessfully) that the charter be amended so that there shall be in it no distinction of color." Not only did Kingsbury's fellow townsmen disagree with him, the General Assembly struck the section Kingsbury attempted to strengthen. In the words of the editor of the *Galesburg Democrat*, the members of the General Assembly "were not willing that negroes should even be *recognized* in an educational system; believing, as they do, that they have no rights which white men are bound to respect.[25]

The blacks towards whom the above-discussed animosity was directed, shared some characteristics with their adversaries. An unscientific scan of the census schedules for 1850 suggests that half, or more, of the blacks in western Illinois were not born in the state; they were immigrants. It would appear that a larger percentage of blacks than whites were born in the southern and border states. The states that seem to be most often listed (but this is only a sampling) are Virginia, Kentucky, Tennessee, Pennsylvania,

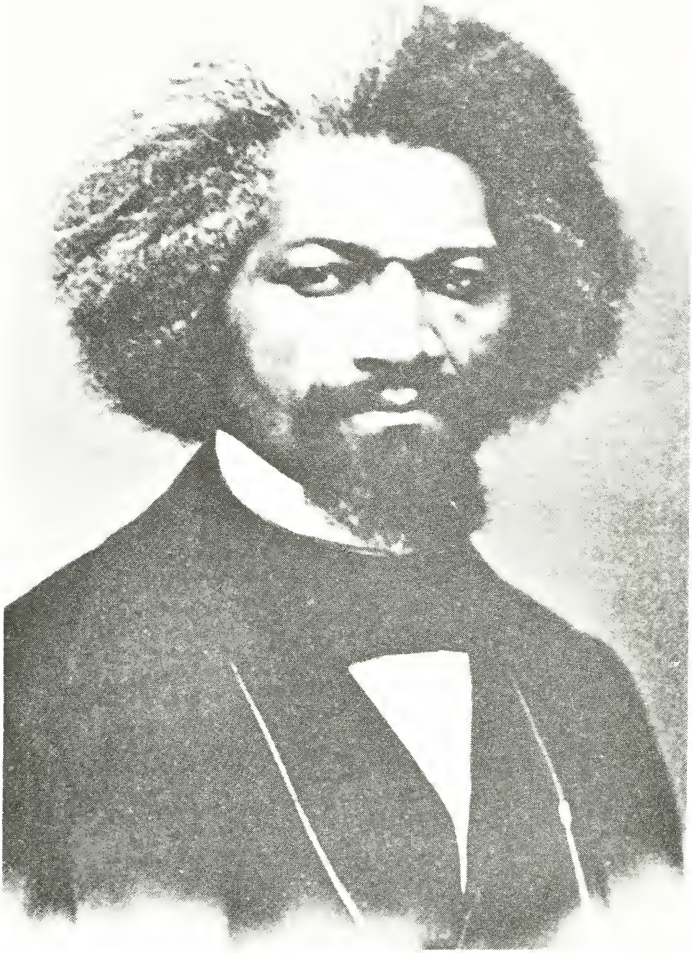
and Missouri. My unscientific sampling also turned up one black born in the West Indies, another listed the Oregon Trail. Also, similar to many border south immigrants, a high proportion appeared to be illiterate. On the other hand, a much higher percentage of blacks than whites lived in western Illinois towns. The 1860 census shows that of the 860 blacks in the fourteen county area under 5% lived outside cities and towns. The percentage living outside towns may well have been higher in 1850 and before. It is clear from black registration books and bonds filed with circuit clerks that many southern farmers brought one or two blacks with them, and presumably they worked either as indentured servants (prior to 1845) or as hired hands after that period. It appears, however, that many black farmers and farm laborers lived in town, thus, perhaps, making census schedule interpretation risky. An unscientific sampling of other occupations by blacks showed that after farmers, farm laborers, domestics (or servants), and common laborer, the most frequently listed occupation for black men was barber. Indeed, barber was the occupation listed for twelve of the thirty blacks so identified in *Root's Peoria City Directory of 1859*. Other occupations listed in city directories or on census schedules included cook, distillery fireman, drayman, mason, blacksmith, sexton, and stray-hunter (dog catcher?). Peoria, Quincy, and Galesburg city directories also each listed an A.M.E. minister, while Quincy's minister was also the teacher at the local colored school, the occupation under which he was listed in the alphabetical name section of the directory.[26]

Where there are more than perhaps a half dozen black adults, separate black institutions tended to emerge. The A.M.E. churches in Quincy, Peoria, and Galesburg are good examples. (I know of no Baptist churches in the area prior to 1860). At the same time there were several instances of blacks becoming members of mainline white churches, especially the Baptist and Methodist. Indeed the Baptist General Association of Illinois (white) urged its churches to welcome black members.[27]

By the mid-1850s the number of blacks in western Illinois had increased in selected communities sufficiently for them to develop a few institutional activities. In addition to the founding of churches and at least one black school, they had annual celebrations, usually on August 1, to commemorate the West Indian Emancipation Day. In a fashion typical of American society in general, these events were important social occasions as well as political events, and were held in the principal centers of black settlement—Galesburg, Peoria, and Quincy. They were often day long events that ended late in the evening, accompanied by picnics, musical presentations, and speeches on both political and religious topics. They used these occasions to renew their calls for an end to slavery in the southern states, and to denounce oppressive laws in Illinois. Although organized by black leadership, they frequently invited prominent white abolitionists to attend (and they did) and to address their meetings. In 1857, as example, the Knox County celebration at Galesburg drew people not only from all over the

county, but Quincy, Kewanee, Coles and Edgar counties, and Burlington, Iowa. The organizers had invited to address them, among others, noted black leaders Frederick Douglass and John Jones of Chicago, both of whom sent letters of regret. Joseph H. Barquet of Galesburg, however, delivered a lengthy address described by the black reporter of the proceedings as "full of burning eloquence, deep, thorough and historical research, seldom if ever equalled in this State. In recurring to the bloody scenes that were being enacted in the State, he drew disapprobation from the hearers who were with the speaker in the expression of almost every sentiment." Joseph D. Allen, the "Knoxville Sage," a prosperous black Knox Township farmer who had been in the county since the mid-1830s also addressed the gathering "in his usual witty and sarcastic style." They also took the occasion to pass resolutions denouncing the Dred Scott decision and to organize committees to press the cause of freedom throughout Illinois. Similar meetings were held in subsequent years. Among those who addressed the meetings were Augustus O. Dobbins, a barber who had had shops variously in Peoria, Monmouth and Canton (and may have been the black barber run out of Macomb by Jim Campbell); M.M. Clarke, a black Quincy A.M.E. minister and school teacher who had edited "the Church paper," and the "Rev. Mr. Hall of Chicago, a colored clergyman of considerable reputation."[28]

By the late 1850s Galesburg blacks had organized an African Literary and Debating Society which met monthly, and according to Barquet: "It is no more than right that these men and women who, in childhood, had no opportunity to learn, should now endeavor to instruct themselves, and each other, by societies, and that our citizens should monthly pay them or their meetings, a visit to speak to them." From the evidence presently available, it appears that the black community in Galesburg was more active, and articulate, than those elsewhere in western Illinois. Not only had they organized the Literary and Debating Society, but they also appear to have been more aggressive—perhaps owing to the greater tolerance to Galesburg—in protesting oppression and seeking entrance into the larger society. Also, in Galesburg, they had an opportunity to listen to black leaders of national stature. Frederick Douglass delivered at least three lectures in Galesburg in late February, 1859. He was accompanied by H. Ford Douglas (not a relative), who also lectured. The latter was a well-known emigrationist by the late fifties who frequently clashed with Frederick Douglass over the wisdom of such a course. Galesburg blacks publicly protested, for example, the exclusion from the Saluda school of the mulatto children of a Mr. Knox (white) and his black wife even though the teacher had not objected. Galesburg blacks dared also to hold a memorial meeting in honor of John Brown following his execution in Virginia for the Harpers Ferry raid. Nevertheless, even here, in 1859, Galesburg blacks were ready to consider emigration to Haiti in response to an invitation by President Geffrard who had recently engineered a coup there. It appears, however, that this



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nascent emigration movement never materialized.[29]

By the eve of the Civil War, many west central Illinois blacks had carved out a niche for themselves in a society that remained hostile, or indifferent for the most part. Their opportunities for economic advancement were limited but present. Their presence was tolerated, if not welcomed. They had, furthermore, developed important support organizations for making their life more tolerable. In addition, they were able to communicate with leaders across the state and nation. Black conventions met with some consistency in the state and nation; the larger black communities in Chicago, Springfield, Jacksonville, and Alton provided additional support and leadership. And the black church movement that saw Methodists organized on a national basis and the Baptists on a state basis provided additional leadership and support as both combatted political and economic oppression as well as promoting salvation. Despite the persistent antipathy and neglect by those who controlled the economic, political, and social structure of society, and the siren call of emigration, west central Illinois blacks continued to press for improvement in their circumstances.

NOTES

[1]The fourteen counties included in this study are Adams, Calhoun, Fulton, Hancock, Knox, Peoria, Pike, Schuyler, Warren, Brown, Henderson, McDonough, Marshall, and Stark, the latter five organized after 1830.

[2]See "A Tabular Statement, Showing the Population of the Different Counties in This State,. . ." in *Illinois House Journal*, 9 G.A., 2 sess. (1835), folder in between pp. 294-295, for the French slaves.

[3]For the most succinct account see Eugene H. Berwanger, *The Frontier Against Slavery* (Urbana: University of Illinois Press, 1967), pp. 1-59. For the relevant statutes see the *Revised Statutes of the State of Illinois*. . ., revised and prepared for publication by M. Brayman (Springfield: William Walters, 1845), pp. 154, 159, 237, 352, 386-91.

[4]Theodore Calvin Pease, ed., *Illinois Election Returns*, vol. 18, Collections of the Illinois State Historical Library (Springfield: Illinois State Historical Library, 1923), pp. 173, 176; Illinois Constitution of 1848, Article XIV.

[5]Pease, *Election Returns*, 176, 178, 180.

[6]Illinois House Journal, 18 G.A. (1853), 442-44; *Illinois Senate Journal*, 18 G.A. (1853), p. 475; *Laws of Illinois*, 18 G.A. (1853), p. 57-60; *Knoxville Journal*, Feb. 8, 1853, p. 2, c. 5; *Monmouth Atlas*, Feb. 11, 1853, p. 2, c. 2 4-5; Ibid., Feb. 25, 1853, p. 1, c. 3; *Quincy Weekly Herald*, Feb. 21, 1853, p. 2, c. 1.

[7]*McDonough Independent*, Macomb, Ill., March 25, 1853, p. 2, c. 2; April 15, 1853, p. 2,

c. 2. See also the *Quincy Weekly Herald*, Feb. 21, 1853, p. 2, c. 6.

[8]Quoted in the *McDonough Independent*, May 20, 1853, p. 2, c. 5.

[9]Dated March 1, 1853, in *The Western Citizen and Chicago Weekly Times*, March 8, 1853, p. 1, c. 2.

[10]*Western Citizen*, Chicago, May 3, 1853, p. 2, c. 5; Philip S. Foner and George E. Walker, eds., *Proceedings of the Black State Conventions*, 1840-1865 (Phildelphia: Temple University Press, 1980), II, 54-55.

[11]Foner, *Proceedings*, pp. 55-67.

[12]*Illinois Senate Journal*, 19 G.A., 1 Sess. (1855), pp. 54, 156-57, 274; *Illinois State Register*, Springfield, Feb. 5, 1855, p. 2, c. 3; Feb. 6, 1855, p. 2, c. 3; *McDonough Independent* Macomb, Feb. 16, 1855, p. 2, c. 5-6; *Private Laws of Illinois*, 19 G.A. (1855), p. 10-21.

[13]*Population of the United States in 1860; Compiled from the Original Returns of the Eighth Census*. . . (Washington: Government Printing Office, 1864), I, 96; S.J. Clarke, *History of McDonough County*. . . (Springfield, Ill.: D.W. Lusk, State Printer, 1878), p. 288-89.

[14]*Illinois Intelligencer*, Vandalia, March 19, 1831, p. 3, c. 2-3; Cyrus Edwards, *An Address Delivered at the State House, in Vandalia, on the Subject of Forming a State Colonization Society*. . . (Jacksonville, Ill.: James G. Edwards, 1831); Berwanger, *Frontier Against Slavery*, p. 52.

[15]*Peoria Register and Northwestern Gazetteer,* Aug. 31, 1839, p. 2, c. 3-4; *Quincy Whig*, April 9, 1845, p. 2, c. 2, 4; *Pike County Free Press*, Pittsfield and Griggsville, May 13, 1847, p. 3, c. 2-3; *Illinois House Journal*, 19 G.A., 1st Sess. (1855), pp. 149, 237; *Knoxville Journal*, Jan. 2, 1855, p. 2, c. 3; *Quincy Herald*, reprinted in *McDonough Independent and Democratic Review*, Jan. 12, 1855, p. 2, c. 5; *Letter from the Rev. J. Mitchell, Agent of the American Colonization Society, in Reply to Certain Inquiries of the House of Representatives Relative to Colonization* (Springfield: Lianphier & Walker, 1855); *Alton Telegraph*, Jan. 6, 1855, p. 2, c. 2-3, Ibid., Jan. 8, p. 2, c. 1.

[16]*Fiftieth Annual Report of the American Colonization Society* . . .(n.p., 1867?), pp. 56-62; Luther E. Robinson, ed., *Historial and Biographical Record of Monmouth and Warren County, Illinois* (Chicago: Munsell, 1927), I, 32; *Western Citizen*, Chicago, Nov. 23, 1847, p. 2, c. 4; S.S. Ball, *Report on the Condition and Prospects of the Republic of Liberia; Made to the Tenth Annual Meeting of the Colored Baptist Association* (Alton, Ill.: "Telegraph" Office, 1848: Jones letters in *Western Citizen*, Sept. 1847, p. 2, c. 4-5, Sept. 28, 1847, p. 2, c. 6-7, Oct. 12 1847, p. 1, c. 3.

[17]*Alton Telegraph*, Jan 13, 1855, p. 2, c. 1

[18]*Galesburg Free Democrat*, Feb. 1, 1855, p. 1, c. 2-3.

[19]See *Narrative of Facts, Respecting Alanson Work, James E. Burr & Geo. Thompson, Prisoners in the Missouri Penitentiary, for the Alleged Crime of Negro Stealing*. . . (Quincy, Ill.:

Quincy Whig Office, 1842); Herman R. Muelder, *Fighters for Freedom: The History of Anti-Slavery Activities of Men and Women Associated with Knox College* (New York: Columbia University Press, 1959), 195-96.

[20]T.H. Johnson and George Whippie, Quincy, April 5, 1850, "Illinois Letters," American Missionary Association Archives, Amistad Research Center, New Orleans, La., (Microfilm, roll 1).

[21]Muelder, *Fighters for Freedom*, pp. 191-220; Larry Gara, "The Underground Railroad in Illinois," *Journal of the Illinois State Historical Society,* 66 (August 1963), 508-28; Edward R. Lewis, Jr., *Reflections of Canton in a Pharmacist's Show Globe: A Comprehensive History of Canton, Illinois, and the Important Events in Fulton County* (n.p., 1967), pp. 36-39; Clarke, *McDonough County*, pp. 267-79; and numerous other west central county histories.

[22]Broadside of Warsaw Lodge No. 21, February 17, 1846, in Illinois State Historical Library, Springfield, Monmouth Atlas, November 8, 1850, p. 3, c. 1.; *Knoxville Journal,* November 19, 1850, p. 2, c. 1-2, December 6, 1853, p. 3, c. 2.

[23]William H. Collins and Cicero F. Perry, *Past and Present of the City of Quincy and Adams County, Illinois* (Chicago: S.J. Clarke, 1905), pp. 97, 152, 157; *The History of Adams County Illinois. . .* (Chicago: Murray, Williamson & Phelps, 1879), p. 484; *Williams' Quincy Directory, City Guide, and Business Mirror, 1859-60* ([Quincy?] C.S. Williams, 1859), p. 14. There is a possibility that a school for blacks was established in 1855. In that year the General Assembly amended the Peoria City charter and gave the city discretionary power to "establish a school or schools for the people of color in said city, on such a basis, and under such rules, regulations and restrictions, as they shall deem just and proper relative to the amount of taxes paid by the colored population." See James M. Cunningham, comp., *The City Charter, With the Several Laws Amendatory Thereto, and the Revised Ordinances of the City of Peoria. . . Prefixed the State Laws Relating to the City. . .*(Peoria: Nason and Hill, 1857), p. 49. See also H.W. Wells, *The School and Teachers of Early Peoria* (Peoria: Jacquin & Co., 1900), pp. 100-02.

[24]Martin Litvin, ed., *Voices of the Prairie Land* (Galesburg, Ill., 1972), I, 158; Muelder, *Fighters for Freedom*, pp. 331-32. *Galesburg Semi-Weekly Democrat*, Feb. 2, 1859, p. 2, c. 2-3, Feb. 19, 1859, p. 2, c. 2; Laws of Illinois, 20 G.A. (1859) p. 163-68; esp. section 20, p. 168. As early as January 14, 1853, Morgan County Senator Joseph Morton had presented a petition signed by "fifty-two colored citizens of Illinois, asking a change of the school law, so as to permit them to receive the benefits of such tax paid by them." *Illinois Senate Journal*, 18 G.A. (1853), p. 73. Two years later, article 84 of the new school law provided: "In townships in which there shall be persons of color, the board of education shall allow such persons a portion of the school fund, equal to the amount of taxes collected for school purposes from such persons of color in their respective townships." *Laws of Illinois,* 19 G.A. (1855), p. 85. See also Ibid., 20 G.A. (1857), p. 292.

[25]*Henry Weekly Courier*, September 24, 1858, p. 2, c. 5, October 1, 1858, p. 2, c. 3-4.

[26]These impressions are based upon and examination of transcriptions of various 1850 and 1860 county censuses from the west central Illinois region found in the Illinois State Historical Library. For the 1860 number of blacks living in towns see *Population of the United States in 1860*, I, 88-101; Among the city directories examined for occupations, in addition to census

transcripts, were Henry N. McEvoy, 1857 *Galesburg, Monmouth, Knoxville and Abingdon Directories* (Chicago: Robert Fergus, 1857); Omi E. Root, *Root's Galesburg City Directory, for the Year 1861* (Galesburg, 1861); McEvoy and Beatty, *Quincy City Directory, and Business Mirror, for 1857-8* (Quincy, Ill.: Whig Office Steam Power Press, 1857); Omi E. Root, *Root's Peoria City Directory, for the Year 1859* (Peoria, Ill.: Nason and Hill, 1858).

[27]See the city directories cited above and *Minutes of the Illinois Baptist Pastoral Union, Twentieth Annual Meeting, and of the Baptist General Association of Illinois, Twenty-First Annual Meeting. . .* (Alton, Ill.: S.V. Crossman, 1865), p. 43. Not only was Free Frank McWorter, along with his family, a member of the Pleasant Vale Baptist Church in Pike County, but he was one of the church's delegates to Blue River Association in 1834. See Juliet E. K. Walker, *Free Frank: A Black Pioneer on the Antebellum Frontier* (Lexington: University Press of Kentucky, 1983), p. 85.

[28]*Galesburg Free Democrat*, July 24, 1856, p. 2, c. 2, August 12, 1857, p. 2, c. 6; Peoria *Weekly Transcript,* August 6, 1858, p. 2, c. 1, August 5, 1859, p. 2, c. 3; *Galesburg Semi-Weekly Democrat*, July 30, 1859, p. 3, c. 1, August 3, p. 3, c. 1; *Tazewell Register,* Pekin, Ill., August 4, 1859, p. 2, c. 5 *The Fulton Ledger,* Canton, Ill., September 15, 1857, p. 2, c. 3, p. 3, c. 4.

[29]*Galesburg Semi-Weekly Democrat*, Feb. 16, 1859, p. 3, c. 1, Feb. 23, 1859, p. 3, c. 1, March 2, 1859, p. 3, c. 2, April 1859, p. 2, c. 2, May 11, 1859, p. 3, c. 1, November 23, 1859, p. 3, c. 1, Dec. 3, 1859, p. 3, c. 1, January 13, 1860, p. 2, c. 3, June 15, 1860, p. 2, c. 3.

NOTES AND DOCUMENTS

EDITOR'S NOTE

This issue, devoted exclusively to the subject of the law, marks the first in a series of special issues of *Western Illinois Regional Studies.* From the many manuscripts submitted, four outstanding articles were finally selected, each reflecting the unique background of the author. Thus the history of the law in the region is examined from the perspective of a lawyer, a professor, a graduate student, and a historical administrator. The success of this special issue has prompted the editors to send out another *Call for Papers* on the topic "Waterways in Western Illinois." It is scheduled to be published in the fall of 1984.

Robert P. Sutton

INGERSOLL ORGANIZATION FORMED

The Friends of Robert G. Ingersoll is a new organization, based in Peoria, which promotes the famous speaker-author's contribution to American culture. They developed a celebration for the 150th anniversary of the Great Agnostic's birth, on August 11, 12, and 13, 1983. Included were lectures by Ingersoll scholars, historical exhibits, tours of Ingersoll sites, an Ingersoll impersonation, and other activities. The organization publishes a newsletter and is interested in publishing volumes of Ingersoll's works, including writings which had not had a wide circulation. Membership in the Friends group is two dollars, and inquiries should be directed to: Michael Richardson, Friends of Robert G. Ingersoll, P.O. Box 5082, Peoria, IL 61601.

An Illinois Literary Heritage Conference was held in Springfield on November 16, sponsored by Secretary of State Jim Edgar, Read Illinois, the Illinois State Library,the Illinois Library Association, and the Illinois Humanities Council. Included were sessions on "Manuscript Materials," "Using Illinois History and Folk Materials," and "The Young Adult Writer," as well as papers by Robert Bray and James Hurt on the variety and significance of Illinois literature. Planning is now under way to promote the state's literary heritage through an extensive bibliography (being prepared by Read Illinois, through the Secretary of State's Office), regional conferences, and other activities. For more information, and to get on the mailing

list for updates and invitations to activities, contact: Polly Myers, Program Coordinator, Read Illinois, Secretary of State Office, Springfield, IL 62756.

The fourth annual Illinois History Symposium was held in Springfield on December 2 and 3. Included on the program were sessions on "Religion and Society," "Governors," "Higher Education and the Socialists," "Game Birds Management," "Nineteenth-century Town Promotion," "Musicians and Poets," "Politician-Soldiers," "Writers," "Indians on the Frontier," and "Community History." Sir Oliver Wright, Ambassador from Great Britain and Northern Ireland, was the featured speaker. A selection of the papers will appear in print during 1984. The Illinois History Symposium is sponsored every year by the Illinois State Historical Society. Proposals for sessions and papers for next December's Symposium are already being sought. Contact: Robert D. Bridges, Director of Research, Illinois State Historical Library, Old State Capitol, Springfield, IL 62706.

The sixth annual Western Illinois Regional Studies Conference will be hosted by Sangamon State University and Lincoln Land Community College in Springfield on April 13 and 14, 1984. The theme of the conference is "The Town and the Prairie." In addition to various papers by professors in history, literature, and architecture, there will be tours of the Dana Thomas House (a building of the Frank Lloyd Wright school) and the Lincoln Home. For detailed information and registration forms, contact: Christopher N. Breiseth, Department of History, Sangamon State University, Springfield, IL 62708.

RECENT PUBLICATIONS ON THE HISTORY OF WESTERN ILLINOIS AND EASTERN IOWA

Several books stand out in the number of publications which were issued during the past year.

57,000 Sunsets by Carl and Bernice Bloomberg is a compilation of historically important facts about Galesburg. The 607 pages of text and many illustrations attest to the comprehensiveness of coverage. *57,000 Sunsets* is a chronologically arranged reference work on the history of Galesburg. The town's development is covered by years, whereby each year, or chapter, consists of a number of short paragraphs on a variety of subjects and events that shaped Galesburg. Unfortunately, the book does not interpret these events, nor is there any summary of the town's development. The book can be purchased from Bloomberg Pioneer Museum, 1782 S. Seminary, Galesburg, IL 61401.

Monmouth-Western Stoneware by Jim Martin and Bette Cooper is a professionally executed catalog of pottery and stoneware. The authors, in their preface, state that their goal is to "enlighten collectors and dealers about the items made by the Monmouth pottery industry." In the process, they provide historical sketches of the Monmouth and many other area potteries. The book is 150 pages long. It contains a glossary of terms, a

brief bibliography, and a good index. Its main feature is hundreds of good-quality illustrations of pottery, some of which are in color. In addition, there are numerous views of advertisements and memorabilia. The book can be obtained from Wallace Homestead Book Co., 1912 Grand Ave., Des Moines, IA 50305.

Spoon River: History and Festivals by Marjorie Rich Bordner is a well researched and splendidly illustrated volume on Fulton County in general, and the Spoon River Scenic Drive Festival in particular. Vignettes which accompany photographs of buildings and county views are well written and contain much valuable, yet little known, information. This book celebrates Fulton County and its people. On the surface it may appear provincial in coverage and appeal; however, its execution and content, including an index, are highly professional. The volume can be purchased from Mrs. Lawrence I. Bordner, 45 North Park Drive, Canton, IL 61520.

David Alan Badger of Havana, IL has recently started *The Badger Collection*, a series of volumes which feature architecturally and historically significant buildings in Illinois. The volumes which feature western Illinois towns are *Peoria, Featuring Moss Avenue, Petersburg,* and *Havana, Illinois.* Each volume is published in a limited edition of 200 copies and is numbered and signed. The volumes have approximately fifty leaves of illustrations and little text, the latter being a major drawback of the volumes thus far published. "The illustrations are precise architectural drawings that make the buildings immediately recognizable. Mr. Badger's control of line leaves no doubt as to the textures of wood, brick or trim." (William Sanders, Professor of Art, WIU). Information on the series can be obtained from David Alan Badger, 202 S. Plum, Havana, IL 62644.

The year 1983 marks the sesquicentennial celebration of Burlington, Iowa. The occasion prompted the reprint of the excellent history of Burlington by Philip D. Jordan, which was originally published in 1975. *Catfish Bend, River Town and County Seat* is available from Martha Jordan Soland, 32 Cascade Terrace, Burlington, IA 52601.

Burlington on the Mississippi, 1833-1983 by Helen Turner McKim and Helen Parsons, published by Doran & Ward Lithographing Co. "was conceived as a means of recognizing and remembering this sesquicentennial year in the continuing history of Burlington." The ninety-page volume follows the pattern set by numerous community histories. It presents the history of the town under topical headings, but unfortunately does not unify these topics into a chronological conceptual whole. Nevertheless, the book contains a wealth of locally important information as well as many well reproduced historical photographs. It is, both in concept and in execution, a totally different volume than *Catfish Bend.* A reading of both works should provide a comprehensive knowledge of the history of Burlington, and, even more importantly, offer insights into different approaches to the writing of community history.

Church histories are usually short brochures or several pages of text and

photographs appended to programs for centennial or similar celebrations. *Past and Present of the Raritan Baptist Church, Raritan, Illinois, 1858-1983* is a book of one hundred ten pages consisting primarily of minute books of the church. According to its compilers, Wayne Gearhart and John Allaman, all the important minutes were copied verbatim and supplemented, where necessary, by excerpts from the local newspapers and a county history book. The three-page introduction and several appendices give an overview of the project and the general history of the church. Endnotes and a suggested reading list make this volume a non-typical church history. However, the readily accessible minutes of the congregation are the main research attraction of this volume. They reflect the nuts-and-bolts concerns of the parishioners, yet at the same time document the activities of the Baptist Church in Illinois. The influences of local church groups have been a much neglected aspect of local history writing. For the most part this has been due to inadequacy of documentation. The volume on the Raritan Baptist Church makes a good beginning in the right direction.

I Want to See a Lawyer by George W. Carpenter was published in 1981 but is included in this review because of its relevance to the "Law and Order" theme of the present issue of *Western Illinois Regional Studies*. The volume is a compilation of information on murder cases in Calhoun County from 1821 to 1981. Carpenter, the leading local historian of Calhoun County, assembled the present volume by examining old county records and court documents. The volume is a factual recapitulation of major developments associated with murders in the county. The second half of the volume, which features court systems in Calhoun County, outlines the changes in the administration of justice and closes with listings of all judges, justices of the peace, and police magistrates. The charm of Mr. Carpenter's book is that he frequently cites first-person accounts and observations, which give this volume a flavor of immediacy.

The past year has seen an ever growing number of local genealogical publications. We will briefly mention those which have come to our attention. Ruth Flescher Robb has published the *1850 Brown County, Ill. Federal Census*. The census is available from the author, 131 West North Ave., Lombard, IL 60148.

Fulton County Genealogical and Historical Society has published *Cemetery Inscriptions of Fulton County, Illinois*. Thus far eight volumes have appeared, covering fifteen townships. The Society also reprinted *Fulton County Atlas and Plat Book, 1895*. Their publications can be ordered from Mrs. David Hayes, 273 E. Vine Street, Farmington, IL 61531.

The Tri-County Genealogical Society (P.O. Box 355, Augusta, IL), has published volume one of *The 1860 Hancock County, Illinois Census*, covering eight townships and Nauvoo. Other publications are volume one of *Marriage Index of Hancock County, Ill.*, covering the years 1829-1849 and *Round Prairie Cemetery of Schuyler County, Illinois*, published in 1981.

McDonough County Genealogical Society (P.O. Box 202, Macomb, IL

61455), has published *Good Hope Cemetery at Good Hope, Illinois*, 1982; *Mt. Auburn Cemetery, Colchester Twp., Colchester, Ill; Burials in St. Paul's Catholic Cemetery, Macomb, Illinois; Glade City Cemetery, Blandinsville, Illinois; McDonough County Marriages* in three volumes, covering the years 1830 to 1871; *Index of Personal Names Found in the History of McDonough County, Illinois, 1885*; and *Illinois: McDonough County 1880 Census.*

The Peoria Genealogical Society (P.O. Box 1489, Peoria, IL 61655) is in the process of publishing *Peoria County, Illinois, Cemeteries.* Twelve townships have thus far been covered.

Blackhawk Genealogical Society (P.O. Box 912, Rock Island, IL 61201) has published *Index to Rock Island County, Illinois, 1860 Federal Census.*

Warren County, Illinois, Genealogical Society (P.O. Box 240, Monmouth, IL 61462) is in the process of publishing *Tombstone Inscriptions* for individual townships. Thus far they have covered seven townships. They recently also published *Supplemental Index to 1886 Warren County Portrait and Biographical Album.*

Additions to this list will be appreciated. Please direct correspondence to Gordana Rezab, Library, Western Illinois University, Macomb, IL 61455.

Gordana Rezab

BOOK REVIEWS

FREE FRANK: A BLACK PIONEER ON THE ANTEBELLUM FRONTIER. By Juliet E.K. Walker. Lexington: University Press of Kentucky, 1983. Pp. 223.

Biographies of settlers and pioneers on the edges of the advancing American frontier between the War of Independence and the Civil War describe familiar themes of hard times and human endurance. These well known ingredients constitute only a fraction of the drama in Juliet E.K. Walker's *Free Frank: A Black Pioneer on the Antebellum Frontier*. Black Americans moving west with the successive waves of settlement experienced unfamiliar and more complicated obstacles in reaching similar goals. This investigation of a family tree has a sharper focus and a clearer narrative than Alex Haley's *Roots*; but one senses the same exhilarating thrill as the author reconstructs the history of a heroic struggle to survive against and to beat the system.

Walker focuses on one individual, her great-great-grandfather, Free Frank. In describing the fascinating experiences of this incredible man, Walker enlarges our understanding of the black family and the modification of institutions controlling slaves and free blacks on the frontier. A black pioneer with creative ingenuity used environmental hardships and sparse populations as levers to pry open cracks in the system for individual black progress.

Free Frank was born a slave in 1777 on the Piedmont frontier in South Carolina. His master, George McWhorter, took him to the Kentucky Pennyroyal frontier in 1795. McWhorter did not wish to remain on his land in Kentucky. Therefore, while managing the McWhorter land in Pulaski County, Kentucky, Free Frank was allowed to hire out his labor. Hiring out guaranteed the slave owner a fixed income, allowed the slave hirer cheap labor from workers in a lower caste, and permitted the slave entrepreneur a source of meaningful income. Free Frank found the situation lucrative, both in monetary return and free time for an independent project, the mining of saltpeter. As it turned out, saltpeter was a necessity for the War of 1812 and Free Frank profited.

By working hard for others and himself, Free Frank earned enough money to purchase in 1817 his wife Lucy (m. 1799) and himself in 1819.

Free Frank took advantage of federal land policies and moved to Pike County, Illinois as a land speculator on the Illinois River frontier. His dream was to purchase his entire family. Some of his children were born into slavery and still held by white owners. He wanted to accumulate and hold some land for his growing free family. But he also used profits from commercial farming and land speculation for purchasing the freedom of family members.

When Free Frank died in 1854, he had purchased sixteen members of his family (including himself) with over $14,000. The family held over 600 acres of commercial farm property as well as ownership of New Phildelphia, a town founded and developed by Free Frank in Pike County. Although New Phildelphia eventually dissolved because the railroad bypassed the town in 1869, Free Frank demonstrated that non-slave blacks could live out a dream on the edge of the frontier.

Walker develops a second fascinating theme which gradually surfaces as the Free Frank family achieves one goal after another. For white pioneers, the concentration of family members and land ownership usually resulted in continual economic, social, and political progress. The 1850s in Illinois reversed this for blacks. The Illinois legislators passed laws designed to make the state white. Increased racial hostility, threats from slave hunters, and political candidates and parties opposed to black equality curtailed the progress Free Frank had generated for his black family and community in Pike County.

Juliet Walker heard much of her great-great-grandfather's extraordinary life as it was told in the oral tradition of her family. She fortuitously retrieved and preserved a collection of about 100 documents that constitute the Free Frank Papers (letters, bills-of-sale, good character statements, notes, etc.). She found that county, state and federal records filled in some of the gaps. Walker further triangulated the undocumented years with solid and voluminous secondary accounts. The elaborate and extensive footnotes become an integral part of this biography. Walker's investigation and quest is traced through this interesting documentation. The biography is illustrated with old photographs and maps and the text is supplemented with charts and tables. Walker shares with us more than a family memoir. The biography of Free Frank is a model many authors would do well to emulate.

A. Gilbert Belles
Western Illinois University

TRAVELS IN TIME: MILAN, ILLINOIS. Mideapolis, Iowa: New Era Print, 1982. Pp. 243.

Milan, Illinois, is one of several communities that developed in the shadow of Rock Island, Moline, and Davenport, and is now part of the larger

landscape known as the Quad Cities. The village was founded in 1843 as Camden. The name was changed to Camden Mills in 1848 and to Milan in 1870.

Travels in Time is presented in a series of historic and pictorial narratives. The discussion of Milan's early history focuses on Black Hawk, William Dickson, its founder, and the settlement of the village on the south bank of the Rock River. Subsequent sections of unequal length deal with early settlers, landmarks in the community, transportation, businesses, medical history, government and utilities, churches, schools, the military, organizations, family histories, historic listings, and a calendar of events in the village's pre- and post-settlement history.

The book has several minor flaws. While there is an index to the names that appear in the text, there is no table of contents to set the stage for what will follow. In an apparent attempt to keep publication costs at a minimum, the text is closely spaced and the type size is rather small. The spacing, coupled with a stark black type on white paper, makes reading somewhat difficult. The narrow margin on the bound side of the page presents a reading problem as well.

These criticisms should not detract from the value of the publication. *Travels in Time* is a handsomely illustrated history that was compiled by local citizens who have a deep pride in their community. Other villages and towns considering the preparation of a local history would do well to follow the example of Milan.

Donald W. Griffin
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LAST STANDS: NOTES FROM MEMORY. By Hilary Masters. Boston: David R. Godine, 1982. Pp. 210. $14.95.

Last Stands: Notes from Memory is a brilliant and utterly seamless remembrance of Hilary Masters' own life from his earliest memories at age four of a trip west in 1932 to the death in 1950 of his father, Edgar Lee Masters. But it is far more than that. Perhaps in its largest sense it exemplifies how history inexorably first appropriates us and how we battle back, shaping the nature of our last stands by how we appropriate history. Fortunately for us, Masters has turned his own appropriation of his personal history into a work of art. He has given us his own story and the stories of his parents and maternal grandparents. *Last Stands* is not, however, a conventional sketch of a famous father by an admiring son.

Neither does it follow conventional chronological sequence. Hilary Masters is the strong, central consciousness who weaves together all the fragments of time which the chronicle covers. His prose effortlessly sweeps back and forth over not only the principal years of the narrative but also

back to the days of the frontier west and Custer's Last Stand and forward to the author's own consciousness of fabricating his text. Masters is the pebble dropped into the pool of history, and he explores the significance of only those events that the rings radiating out from him touch. As he reflects upon the ripples of his past, he unifies the events of the narrative by perceiving his life as a journey through an inevitable process of first being shaped by history and then responding to that shape. In the act of recreating his history for this book, he makes peace with his past. In describing how as a fourteen-year-old innocent from the midwest he was haughtily greeted by classmates at a private school in New Hampshire, he remembers that

> maybe those preppies offered me an insight that I was too unsophisticated to perceive: that there are certain things that can never be spoken of directly, or described as they happen, but if one is lucky, the attempt can be made later to talk about them, even write about them. The emphasis is on the preposition: to talk or write around, on the outside of a subject but never inside. So, here's the problem with this transition. The signal fires and phone lines and letters that I had assumed to be a permanent field, like the prairie that turned endlessly outside my train window, were a network that had come unraveled without my knowing it. Now, it must be pieced together from the outside and long after the incidents took place.

The sense of travel which permeates this book and embodies the author's play of memory over his past comes to an end on the penultimate page: "As we sit for this last picture, each of us in this room has been similarly reduced, our lives slowly coming together, reduced to this peaceful essence layered by fragrant pipe smoke, this remedy of time that my mother's pen stroke seems to prescribe with each scratch upon a term paper. My travels are over." Time's remedy finally allows Masters to end his travels: to know himself as child of his past and father to his own last stands.

It is in recounting his travels, however, that Masters most delights the reader with his pictures (he also works as a professional photographer) of character and scene. Both are evoked with a novelistic love of detail. We have vivid portraits of Masters' grandparents, Gee Gee and Mollie Coyne, with whom he lived until he was fourteen, of his mother Ellen, and of his father. When Edgar Lee Masters went to Chicago in 1892 he took "poems, many poems, packed among the underwear and shirts along with the same portfolio for success all country boys lug into the city, bound in ambition and edited by dreams." That is graceful prose; it is a joy to read and it ranks with the finest writing being done in America today.

Hilary Masers' *Notes from Memory*, then, is a remembrance. It has qualities and themes which place it squarely in the American Literary tradition, yet it is a singular and striking work. It is difficult—and perhaps pointless—to even attempt to categorize this book which is part autobiography, part biography, part local history, and part history of consciousness in America. The important part for us is that Masters' work is a success:

"We both trace and retrace our paths across a small field. . . not to find anything that may have been lost along the way, but somehow, to enlarge the perimeter of our search." Our collective search has been enlarged. Furthermore, in the sense in which a remembrance can also be a commemoration, Masters has wonderfully commemorated his own past.

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